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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-436

JAMES L. BUCKLEY, EUGENE J. McCARTHY, WILLIAM A. STEIGER, STEWART R. MOTT, COMMITTEE FOR A CONSTITUTIONAL PRESIDENCY–McCARTHY '76, CONSERVATIVE PARTY OF THE STATE OF NEW YORK, LIBERTARIAN PARTY, MISSISSIPPI REPUBLICAN PARTY, NEW YORK CIVIL LIBERTIES UNION, INC., AMERICAN CONSERVATIVE UNION, CONSERVATIVE VICTORY FUND; HUMAN EVENTS, INC.,

Appellants,

v.

FRANCIS R. VALEO, *et al.*,

Appellees.

ON APPEAL FROM THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

JURISDICTIONAL STATEMENT

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JAMES L. BUCKLEY, EUGENE J. McCARTHY, WILLIAM A. STEIGER, STEWART R. MOTT, COMMITTEE FOR A CONSTITUTIONAL PRESIDENCY–McCARTHY '76, CONSERVATIVE PARTY OF THE STATE OF NEW YORK, LIBERTARIAN PARTY, MISSISSIPPI REPUBLICAN PARTY, NEW YORK CIVIL LIBERTIES UNION, INC., AMERICAN CONSERVATIVE UNION, CONSERVATIVE VICTORY FUND, HUMAN EVENTS, INC.,

Appellants,

v.

FRANCIS R. VALEO, *et al.*,

Appellees.

ON APPEAL FROM THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

JURISDICTIONAL STATEMENT

Appellants James L. Buckley, *et al.*, appeal from a decision on August 15, 1975, of the United States Court of Appeals for the District of Columbia Circuit upholding the constitutionality of all but one challenged subsection of the Federal Election Campaign Act of 1971, Public Law 92-225, 2 U.S.C. §§ 431 *et seq.*, as amended by the Federal Election Campaign Act Amendments of 1974, Public Law 93-443 (FECA), and of the Revenue Act of 1971, Public Law 92-178, 85 Stat. 563, as amended by Public Law 93-53, 87 Stat. 139, and as further amended by the Federal Election Campaign Act Amendments of 1974, 26 U.S.C. §§ 9001 *et seq.* (Subtitle H).

OPINIONS BELOW

The judgment and majority, concurring and dissenting opinions and order of the Court of Appeals are printed as Appendix A hereto. They have not yet been officially reported.

JURISDICTION

The action below was initiated by appellants as a suit for injunctive and declaratory relief against the enforcement of certain provisions of the FECA as repugnant to the Constitution. The action was originally brought in the United States District Court for the District of Columbia, and was immediately certified, pursuant to 2 U.S.C. § 437h(a), to the United States Court of Appeals for the District of Columbia Circuit, sitting *en banc*. *Buckley* v. *Valeo*, 387 F. Supp. 135 (1975). The Court of Appeals remanded the case to the District Court for fact finding and recertification. After remand, all issues were recertified to the Court of Appeals. The opinions of the Court of Appeals were filed on August 15, 1975 (Appendix A). On August 21, 1975, appellants filed in the Court of Appeals their Notice of Appeal to this Court (Appendix B).

Jurisdiction of the appeal is conferred on this Court by 2 U.S.C. § 437h (b), which provides:

> "Notwithstanding any other provision of law, any decision on a matter certified under subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States."

Section 437h (c) provides:

> "It shall be the duty of the court of appeals and of the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter certified under subsection (a)."

To facilitate such expedited disposition of this litigation, the appellants are today filing both their Jurisdictional

Statement and their Brief, so that the case may be set promptly for completion of briefing and argument if the Court notes probable jurisdiction. Appellees have agreed to this procedure.

STATUTE INVOLVED

The statutes involved in this appeal are the Federal Election Campaign Act of 1971, Public Law 92-225, 2 U.S.C. §§ 431 *et seq.*, as amended by the Federal Election Campaign Act Amendments of 1974, Public Law 93-443, including amendments to the criminal code; and Subtitle H of the Internal Revenue Code of 1954, Public Law 92-178, 26 U.S.C. §§ 9001 *et seq.*, as amended by Public Law 93-53, 87 Stat. 139, and as further amended by the Federal Election Campaign Act Amendments of 1974.

The particular provisions of these statutes whose constitutionality is at issue are those listed in the certified constitutional questions, set out at pp. 1582-86 of Appendix A hereto. The text of the statutes is contained in the Senate print entitled *Federal Election Campaign Laws*, filed today as Volume III of the Appendix to the briefs herein.

QUESTIONS PRESENTED

1. Did the Court of Appeals correctly conclude that the limitations imposed by FECA on expenditures by political candidates and organizations are constitutional?
2. Did the Court of Appeals correctly conclude that the limitation imposed by FECA on expenditures by any person relative to a clearly identified candidate are constitutional?
3. Did the Court of Appeals correctly conclude that the limitations imposed by FECA on contributions to political candidates and organizations are constitutional?

4. Did the Court of Appeals correctly conclude that the disclosure requirements imposed on political candidates, organizations and individuals by FECA are constitutional?
5. Did the Court of Appeals properly conclude that the public financing provisions of FECA and Subtitle H of the Internal Revenue Code are constitutional?
6. Did the Court of Appeals correctly conclude that the method provided by FECA for appointing members of the Federal Election Commission is constitutional?
7. Did the Court of Appeals properly decline to decide whether certain powers conferred upon the Federal Election Commission by FECA are constitutional?
8. Are the powers conferred upon the Federal Election Commission by FECA constitutional?

A more detailed statement of the questions presented, as certified from the District Court to the Court of Appeals, is found at pp. 1582-86 of Appendix A hereto.

STATEMENT OF THE CASE

Proceedings Below. On January 2, 1975, appellants, four individuals and eight organizations,[1] commenced this action in the United States District Court for the District of

[1] Appellants are: James L. Buckley, United States Senator from New York; Eugene J. McCarthy, former United States Senator from Minnesota and currently an independent candidate for President of the United States; William A. Steiger, a United States Representative from Wisconsin; Stewart R. Mott, a political activist and major contributor to political causes; Committee for a Constitutional Presidency—McCarthy '76, Eugene McCarthy's principal campaign organization; Conservative Party of the State of New york, a political "third" party which has nominated candidates for major federal, state, and local offices; Mississippi Republican Party, a state party affiliated with the national Republican Party; Libertarian Party, a national political party; New York Civil Liberties Union, Inc., an organization devoted to protecting the basic civil rights and liberties of all citizens, as particularly embodied in the Bill of Rights; American Conservative (continued)

Columbia (Corcoran, J.), seeking declaratory and injunctive relief against the operation and effect of the Federal Election Campaign Act, as amended (FECA), and Subtitle H of the Internal Revenue Code. On January 24, 1975, the District Court certified the entire case to the United States Court of Appeals for the District of Columbia Circuit under a special expedited judicial-review procedure, 2 U.S.C. § 437h(a). *Buckley* v. *Valeo*, 387 F. Supp. 135. The Court of Appeals, sitting *en banc*, preliminarily held that the case was properly certified to it, and established by order of March 14, 1975, a fact-finding procedure involving the exchange of proposed findings of fact and documentation in support thereof and opposition thereto.

On April 14, 1975, the Court of Appeals ordered a remand to the District Court for the limited purpose of defining constitutional questions and establishing a factual record for the case to proceed on a recertification to the Court of Appeals to be made no later than May 19, 1975. The Court of Appeals also suggested that the District Court constitute itself as a three-judge court to hear and determine, concurrently with the Court of Appeals, the issues concerning the constitutionality of Subtitle H of the Internal Revenue Code, so as to ensure jurisdiction in this Court on appeal.

Following the remand, the District Court resolved disputed facts and approved agreed-upon facts for recertification of the case to the Court of Appeals on May 19, 1975. A three-judge court was convened; it sat with the Court of Appeals *en banc* in hearing oral argument on June 13, 1975. On August 15, 1975, the Court of Appeals upheld by

[1] (continued)
Union, an organization devoted to the promotion of conservative ideals; Conservative Victory Fund, an organization which contributes campaign money to conservative candidates for federal office; and Human Events, Inc., an organization which publishes a weekly newspaper which features news and commentary of interest to conservatives.

divided votes the constitutionality of most of the major statutory provisions under challenge. One provision, 2 U.S.C. § 437a, was held by unanimous vote of the Court to be unconstitutional; that part of the decision is not here being appealed. In a judgment filed the same day the three-judge District Court adopted the decision of the Court of Appeals as its own with respect to Subtitle H, and denied appellants the requested relief.[2]

Statutes Involved. The principal legislation herein challenged was passed in 1974 as amendments to the Federal Election Campaign Act of 1971. The 1974 Amendments impose strict limits on the amounts of money which may be collected and spent in political campaigns for federal office. Contribution limitations are set at $1,000 per person per candidate per election, $25,000 per person in the aggregate per election year, and $5,000 per political committee per candidate per election, not to be adjusted for inflation. Individual citizens may not make "independent expenditures" in excess of $1,000 on behalf of a candidate in any election year. The candidates themselves may not spend in excess of stated amounts in support of their primary and general-election campaigns, the amount varying with the office and, in the case of the Senate and statewide House seats, with the population of the state. The amounts which a candidate and a candidate's family may expend are also limited, and vary according to the nature of the office being sought.

The FECA also provides for detailed disclosure of campaign contributions in excess of $100, for detailed record-keeping of all contributions in excess of $10, for disclosure of campaign expenditures by candidates, and for disclosure and reporting by individual citizens of their "independent expenditures" in excess of $100.

---

[2] Appellants have also appealed from the District Court's decision, and a separate Jurisdictional Statement in that case is being filed today.

Subtitle H of the Internal Revenue Code provides for federal funding of presidential election campaign activities. The money is appropriated from the Treasury to the Presidential Election Campaign Fund in an amount equal to the sum "checked off" by taxpayers on their annual personal income-tax returns. The money so appropriated is then used to support up to half the costs of candidates for any party's nomination for President; the full costs (up to $2 million) of the national nominating conventions of "major" parties (as defined by performance in the prior quadrennial presidential election) and partial costs of the conventions of "minor" parties (as also so defined); and the full costs of the general presidential election campaigns of major parties and partial costs of the general presidential election campaigns of minor parties. New parties (defined to include old parties which received less than 5% of the vote in the prior election) receive no money for conventions or for the general election. New parties which win more than 5% of the vote may be entitled to money *after* the election. Independent presidential candidates can receive no money at all for any purpose.

To administer and enforce the FECA and Subtitle H, the Congress in 1974 established the Federal Election Commission, a body composed of six voting members, two appointed by the President, and two each by the president *pro tempore* of the Senate and Speaker of the House upon recommendations of the party leaders, with confirmation of all six by a majority vote of both Houses of Congress. The Commission is given primary civil enforcement authority over the FECA, is empowered to investigate violations of the FECA, is to issue advisory opinions, and is to make rules and regulations and set general policy respecting the operation of the FECA and Subtitle H. The Commission is given power to disqualify candidates failing to file required reports with it from standing for federal office within specified numbers of years.

Decision of the Court of Appeals. Relying heavily on what it perceived as the public's perception of corruption in government, the majority found ample justification for congressional attempts to reform the electoral process. In particular, the majority found a "compelling need" for equalizing the power of citizens to influence the course and outcome of elections and for restricting the political influence of wealth (op. at 1510-20).

On the basis of such considerations the majority, without further significant constitutional discussion, approved the limitations on contributions, expenditures, and independent expenditures (op. at 1528-41).

The majority also upheld the constitutionality of the disclosure provisions of the challenged legislation, holding that the disclosure thresholds are not too low and that the showing in the record of chilling effect on and harassment of minor parties and their contributors is insufficient to overcome the presumption of constitutionality of disclosure as applied to independent and minor-party candidates (op. at 1541-49).

The majority held that the Congress may constitutionally appropriate public funds for the support of partisan political activities in the conduct of presidential nominating conventions and campaigns, and that the formulas for distribution of the moneys chosen by Congress in Subtitle H do not unconstitutionally discriminate against minor and new parties and independent candidacies. The majority further held that four-year-old voting patterns were permissible as means for determining and entitlement to federal funds (op. at 1560-70).

Finally, the majority upheld the method of appointment and some of the powers of the Federal Election Commission. The constitutionality of some of the principal enforcement, supervisory, and investigatory powers of the Commission were found not ripe for decision (op. at 1570-80).

Chief Judge Bazelon dissented with respect to the constitutionality of disclosure of campaign contributors to

nascent political parties. Judge Bazelon would have held that such compelled disclosure by minor and new parties impermissibly intrudes upon basic rights of associational privacy as guaranteed by the First Amendment (op. at 1593-97).

Judge Tamm, joined by Judge Wilkey, dissented from the Court's holdings with respect to the constitutionality of contribution and expenditure limitations, the financing of federal elections by the means established in Subtitle H, and the powers and method of appointment of the Federal Election Commission (op. at 1598-1609).

In a separate opinion Judge MacKinnon also dissented with respect to the powers and method of appointment of the Commission (op. at 1609-23).

THE QUESTIONS ARE SUBSTANTIAL

The paramount importance of the issues in this case is universally recognized. The majority below called it an "extraordinary case," and described the court's task as "awesome" and the issues raised as "not less than basic to a democratic society" (op. at 1508, 1510). The challenged legislation makes fundamental, far-reaching changes in the political and electoral processes of the country. Appellants contend that those exchanges violate the Constitution; in particular, that the restrictions on political activity in the challenged legislation violate the rights of all citizens under the First Amendment and that challengers to incumbents, minor and new parties and independent candidates for federal office are discriminated against in violation of the First and Fifth Amendments. Congress itself was not free from doubt as to the constitutionality of the challenged legislation; through 2 U.S.C. § 437h it sought to ensure expeditious and certain review of its constitutionality by this Court.

The legislation places stringent limits on the amount of money which can be spent by candidates and parties in campaigns for federal office. It also stringently limits the

amount of money which individuals and political committees may donate to such campaigns for federal office. Limitations on candidate and party expenditures restrict the information and opinion which political campaigns can disseminate to the public. Contributions have throughout our history been a principal means for participation by American citizens in the political process, and substantial contributions have enabled candidates with initially unpopular or unknown viewpoints effectively to present their cases to the electorate. There are serious questions whether the First Amendment permits regulation of individual and candidate activity directly aimed at political persuasion when the result is the limitation of a person's right to speak and communicate effectively. *Miami Herald Publishing Co.* v. *Tornillo*, 418 U.S. 241 (1974); *Mills* v. *Alabama*, 384 U.S. 214 (1966). Such legislation requires, at the very least, the most searching and critical scrutiny, which the Court of Appeals failed to accord it. Limitations similar to those in the FECA have recently been held invalid under principles of free speech by two state supreme courts. *Deras* v. *Myers*, Ore. , 535 P. 2d 541 (Ore. May 14, 1975); *Bare* v. *Gorton*, 84 Wash. 2d 379 (1974).

The elimination of corruption and the appearance of corruption are purported objectives of the challenged provisions. Appellants believe both these goals can be achieved with narrowly drawn statutes which do not infringe upon the right of free speech. The validity of the "corruption" justification for regulating political speech is a significant question worthy of this Court's consideration.

The FECA also places stringent dollar limitations on expenditures made by individuals to express their political views (by such means as publishing literature or buying advertising space) completely independently of political campaigns where the content of the material advocates the election or defeat of a candidate for federal office. Justified by the Court of Appeals as a loophole-closing device, this is a novel and far-reaching restriction on the right of individuals to play an independent role in campaigns. Independent speech on matters of public concern has been protected by this Court. *New York Times Co* v. *Sullivan*, 376 U.S. 254 (1964).

The legislation also requires reporting to the FEC of all contributions over $100 and record keeping, subject to inspection, of all contributions over $10. These requirements apply, not only to the major parties but also to all candidates running independently or under the sponsorship of a third or minor party. Although disclosure of contributions over some amount may have a positive value when imposed upon the principal contenders for public office, the risks of disclosure to a party or candidate with espouses unpopular causes may be great, and may well infringe upon the First Amendment associational and privacy freedoms of the parties and candidates and their supporters. *NAACP* v. *Alabama*, 357 U.S. 449 (1958). Serious questions also exist as to whether the threshold amounts for disclosure bear any reasonable relation to possible corruption or any other rationale; if not, the disclosure provisions are fatally overbroad as appellants contend.

By Subtitle H of the Internal Revenue Code, providing for federal funding of the campaigns of some but not all candidates for the Presidency, Congress accorded the two major parties an entrenched position as the only serious contenders in presidential politics. The use of strength in prior elections as the only determinant of entitlement to federal funds during campaigns, and the denial of federal funding to new or newly successful third parties and independent candidates until after the elections, if ever, create serious and important question as to the fundamental fairness of Subtitle H under the Constitution. See *Lubin* v. *Panish* 415 U.S. 709 (1974); *Sweezy* v. *New Hampshire*, 354 U.S. 234 (1957).

Finally, the Congress has established a Federal Election Commission, four of whose six members are appointed by the Congress. The Commission has been given broad powers of supervision and civil enforcement of the FECA.

The status of the Commissioners as officers of the United States, and the broad executive and judicial powers granted to the Commission, raise substantial issues as to the constitutionality of the method of appointment of the Commission. See *Springer* v. *Government of the Philippine Islands*, 277 U.S. 189 (1928). Moreover, the enormous discretion allowed the Commission in regulating political conduct and speech raise substantial issues both as to whether the criminal provisions of the statutes are impermissibly vague and as to whether the specified enforcement process is impartial, well monitored, and well suited to the highly sensitive tasks involved, as required by the First Amendment. *Speiser* v. *Randall*, 357 U.S. 513 (1958); *Saia* v. *New York*, 334 U.S. 558 (1948).

CONCLUSION

Probable jurisdiction should be noted. In the alternative, probable jurisdiction should be noted as to Questions Presented Nos. 1-4 and 6-8, with the question of jurisdiction of the appeal of that part of the decision of the Court of Appeals which dealt with the constitutionality of Subtitle H of the Internal Revenue Code (Question Presented No. 5) postponed to a consideration of the merits.

Respectfully submitted,

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September 19, 1975

CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of September, 1975, pursuant to Rules 33(1) and 33(3) (b) of the Rules of this Court, served all parties required to be served by causing three copies of the Jurisdictional Statement to be mailed first class, postage prepaid, to the following persons:

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September 19, 1975

DECISION AND ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

James L. BUCKLEY, United States Senator from the State of New York, et al., Plaintiffs,

v.

Honorable Francis R. VALEO, Secretary, United States Senate, et al., Defendants.

Center for Public Financing of Elections, et al. James C. Calaway of Houston, Texas, Intervenors.

No. 75–1061.

United States Court of Appeals, District of Columbia Circuit.

Aug. 15, 1975.

Certificate from the United States District Court for the District of Columbia (D.C.Civil Action No. 75–0001).

Brice M. Clagett, Washington, D. C., and Ralph K. Winter, Jr., New Haven, Conn., of the bar of the Supreme Court of Connecticut, pro hac vice, by special leave of court, with whom John R. Bolton and Arthur F. Fergenson, Brooklyn, N. Y., were on the brief, for plaintiffs Buckley and others.

Joel Gora, New York City, for plaintiff New York Civil Liberties Union.

Ralph S. Spritzer, Sp. Counsel to the Federal Election Commission, Philadelphia, Pa., with whom John G. Murphy, Jr., Gen. Counsel, Washington, D. C., and Paul Bender, Sp. Counsel, were on the brief, for defendant Federal Election Commission.

Lloyd N. Cutler and Paul J. Mode, Jr., with whom William T. Lake, Washington, D. C., and Patricia D. Douglass, San Francisco, Cal., were on the brief, for intervening defendants Center for Public Financing of Elections, League of Women Voters of the United States, and others.

Kenneth J. Guido, Jr., Washington, D. C., with whom Fred Wertheimer was on the brief, for intervening defendants Common Cause and John W. Gardner.

Dennis G. Linder, Atty., Dept. of Justice with whom Rex E. Lee, Asst. Atty. Gen., and Morton Hollander and David J. Anderson, Attys., Dept of Justice, were on the brief, for defendant Atty. Gen. of the United States.

G. Roger King for Senator Lee Metcalf as amicus curiae.

Stuart M. Nelkin, Houston, Tex., and Al J. Daniel, Jr., entered appearances for intervening plaintiff Calaway.

Before BAZELON, Chief Judge, and WRIGHT, McGOWAN, TAMM, LEVEN-

Synopses, Syllabi and Key Number Classification
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The Synopses, Syllabi and Key Number Classification constitute no part of the opinion of the court.

THAL, ROBINSON, MacKINNON and WILKEY, Circuit Judges, sitting en banc.

BAZELON, Chief Judge, filed a separate opinion dissenting from Part V–A–2 of the per curiam opinion.

TAMM, Circuit Judge, filed a separate opinion, joined in by WILKEY, Circuit Judge, dissenting from Parts IV, VI, and VII of the per curiam opinion.

MacKINNON, Circuit Judge, filed a separate opinion dissenting from Part VII of the per curiam opinion.

Summary

This case presents for review the latest, and by far the most comprehensive, reform legislation passed by Congress concerning the election of the President, Vice-President and members of Congress. The plaintiffs have asked this court to enter a declaratory judgment holding unconstitutional key provisions of the Federal Election Campaign Act of 1971, as amended by the Federal Election Campaign Act Amendments of 1974.

Under the challenged legislative scheme, contributions are limited to $1000 per candidate with an overall limitation of $25,000 per contributor. The statute also establishes an overall ceiling on campaign spending by candidates and convention spending by political parties. There are also elaborate requirements for disclosure of contributions and expenditures to a newly established full-time agency—the Federal Election Commission. Finally, the legislative scheme provides public funding for qualified candidates and political parties.

Under a special statutory provision for expedited judicial review, the plaintiffs' challenge to the key provisions of the Act reached this court in the form of twenty-eight certified constitutional questions. After subjecting the issue to "exacting judicial scrutiny," the court today upholds the core provisions of the legislative scheme, holds one incidental provision unconstitutional, and declines to rule on other provisions for lack of a ripe controversy.

Limitations on Contributions and Expenditures

As to the statutory limitations on contributions and expenditures, the court finds that "the power of Congress to regulate federal elections embraces the power to adopt per candidate and overall limitations on the amount that an individual or political committee may contribute in the context of federal elections and primaries." Its review of the history of campaign abuses and the evolution of a comprehensive legislative scheme designed to "preserve the purity" of the electoral process leads the court to conclude that there is a "compelling governmental interest, both as to need and public perception of need, that justifies any incidental impact on First Amendment freedoms" that results from the statutory limitations. As to the contention that disclosure requirements combined with limits on contributions are sufficient to solve the problem of campaign abuses, the court finds that a number of factors, especially the fact that "limitations on contributions and disclosure requirements pose almost insuperable enforcement problems if not supplemented by limits on expenditures," provide a "validating context for the judgment of Congress that expenditures must be subject to reasonable regulation." Pp. 1528–1541.

Disclosure Requirements

In considering the certified questions concerning the disclosure requirements, the court, relying on the Supreme Court's opinions in *Burroughs and Cannon v. United States* and *Harriss v. United States*, finds that the "governmental interest in preserving the democratic process" justifies the particular disclosure scheme enacted by the Congress. The court recognizes that disclosure has an "impact on personal privacy in political association," but concludes that this is "outweighed" by the compelling state interest. "It is pertinent to the political process, as elsewhere in the marketplace of ideas, that meaningful competition depends on openness." The court also considered the argument that minor parties are constitutionally exempt from disclosure requirements since they need to be protected from presumed oppression and retaliation from the party which wins the election and from the public generally. The court concludes, however, that the provision requiring disclosure by all parties is constitutional on its face, noting that a minor party may in the future "demonstrate such harassment to itself or to its supporters as to underpin a ruling that disclosure in those circumstances cannot constitutionally be required."

But the court does find unconstitutionally vague and overbroad a statutory provision (Section 437a of Title 2 of the United States Code) that is "susceptible to a reading necessitating reporting by groups whose only connection with the elective process arises from completely nonpartisan public discussion of issues of public importance." The court sustains the other disclosure provisions of the Act because the government has demonstrated a substantial and legitimate interest in protecting the integrity of its elections, "an interest closely connected to and plainly advanced by those provisions." But Section 437a seeks to compel disclosure by groups that do no more than discuss issues of public importance on a wholly nonpartisan basis, a point at which the nexus between the governmental interest and the challenged provisions may be more tenuous. The court attempted to construe the statute narrowly, but it is unable "to supply the precision essential to constitutionality." Since "the terms of the statute inhibit free and robust discussion of issues," the court holds Section 437a unconstitutional. Pp. 1541–1560.

Public Financing Provisions

The court considered a number of challenges to the public financing provisions of the Act, which establish a Fund derived from voluntary tax "check-offs" by individual taxpayers, who may, but need not, direct that one dollar of their tax liability go to the Fund. The court holds that Congress acted within its power when it "determined that providing public funding for the three stages of the Presidential selection process would advance the general welfare of the nation by reducing the reliance of Presidential candidates on large contributors, thus reducing their influence on the outcome of elections and on the operation of government." The court also finds no constitutional infirmity in the fact that the taxpayer has no freedom to designate which party or candidate will receive his checked-off dollar. "If the taxpayer wants to avoid any conception that some part of 'his' tax money will benefit candidates he does not favor, then he can simply refrain from checking off his dollar for the Fund."

The court recognizes that "provisions for public funding of Presidential campaigns, like provisions regulating access to the ballot, could operate to give an unfair advantage to the established parties, thus reducing, to the nation's detri-

ment, what the Supreme Court has called the 'potential fluidity of American political life.'" But after careful consideration of the public financing scheme, the court does not find it to be invidiously discriminatory. Nevertheless, it also recognizes the "necessity for all concerned to maintain a careful scrutiny as the provisions are implemented." Pp. 1560–1570.

The Federal Election Commission

In the final part of its opinion, the court considers the constitutional challenge to the newly-established Federal Election Commission. The court recognizes that, "as might be expected in an area as novel and complex as this, which implicates all segments of the federal establishment, the manner of constituting the Commission, the tasks assigned to it, and the authority conferred upon it are in many respects unique." But the court also believes that the new agency is "so essential to the effective functioning of the overall scheme" that it should not be declared unconstitutional unless "wholly without legitimacy in the very terms by which it is brought into being."

The plaintiffs challenge the constitutionality of the method of appointing members of the Commission on the grounds that it violates the doctrine of separation of powers and Article II of the Constitution in that Congress has appointed four members of an agency that performs judicial and executive as well as legislative functions. The court concludes that the Commission is a constitutional legislative agency that performs primarily legislative functions. The court recognizes that some of the powers delegated to the Commission, "when and if exercised in a concrete context, may be in conflict with the Constitution" in that they are dominantly executive or judicial, or unrelated to the exercise of the Commission's legislative functions. But since the Commission has not yet exercised most of the challenged powers, the court postpones consideration of the constitutionality of those grants of authority until such time as there is a ripe controversy. The court does conclude, however, that the Commission does have the power to continue rendering advisory opinions, which advise certain persons as to whether planned activities or transactions will violate federal statutes governing the electoral process. Pp. 1570–1580.

PER CURIAM:

In this extraordinary case, plaintiffs[1] brought an action in the District Court seeking a declaratory judgment holding unconstitutional key provisions of the Federal Election Campaign Act of 1971 (FECA),[2] which was overhauled by the FECA Amendments of 1974.[3] Plaintiffs also asked that the defendants[4] be enjoined from enforcing these Acts. Three organizations and eight individuals in leadership positions with those organizations[5] have intervened in support of the challenged legislation.

Under attack are provisions that broadly require disclosure of and put ceilings on contributions and expenditures inuring to the benefit of candidates for federal office. Also under attack are the public financing provisions inserted into the Internal Revenue Code[6] so as to provide public financing for the primary convention, and general election stages of the Presidential selection process.

District Judge Howard Corcoran, acting pursuant to 2 U.S.C. § 437h[7] (a spe-

1. Plaintiffs are: Senator James L. Buckley, Eugene J. McCarthy, Representative William A. Steiger, Stewart Rawlings Mott, Committee For A Constitutional Presidency—McCarthy '76, Conservative Party of the State of New York, Mississippi Republican Party, Libertarian Party, New York Civil Liberties Union, Inc., American Conservative Union, Conservative Victory Fund, and Human Events, Inc. James C. Calaway is an intervening plaintiff.

2. Federal Election Campaign Act of 1971, Pub. L.No.92–225, 86 Stat. 3 (1972) (codified in sections of 2, 18, 47 U.S.C.) [hereinafter cited as FECA of 1971], *as amended*, Federal Election Campaign Act Amendments of 1974, Pub.L. No.93–443, 83 Stat. 1263 (1975) (codified in sections of 2, 5, 18, 26, 47 U.S.C.) [hereinafter cited as FECAA of 1974]. Title I, governing Campaign Communications, has been repealed. FECAA of 1974, *supra*, § 205(b). Title II consists of Criminal Code Amendments respecting the election law crimes enacted in prior federal election laws, including the Corrupt Practices Act of 1925, ch. 368, Title III, 43 Stat. 1070 (codified in scattered sections of 2, 18 U.S.C.). Title III requires Disclosure of Federal Campaign Funds. Title IV contains General Provisions.

3. FECAA of 1974, *supra* note 2. FECA of 1971, as amended by FECAA of 1974, is hereinafter cited as FECA.

4. Federal defendants are: Hon. Francis R. Valeo, Secretary of the U. S. Senate, Hon. W. Pat Jennings, Clerk of the U. S. House of Representatives, Hon. Elmer B. Staats, Comptroller General of the U. S., Hon. Edward H. Levi, Attorney General of the U. S., and the Federal Election Commission (created by the legislation under review). Defendants Valeo and Jennings are sued both in their capacities as officials of their respective bodies, and as ex officio members of the Commission. The Commission is represented by both the Department of Justice and its own counsel.

Although the Commission was not organized and functioning on January 2, 1975, the date on which this lawsuit was filed, it has completed the transition of powers and duties from the former supervisory officers to itself, under section 208(b) of the FECA Amendments of 1974, and has participated in this litigation by brief and argument.

5. Intervening defendants are: Center For Public Financing of Elections, Common Cause, The League of Women Voters of the United States, Chellis O'Neal Gregory, Norman F. Jacknis, Louise D. Wides, Daniel R. Noyes, Mrs. Edgar B. Stern, Charles F. Taft, John W. Gardner, and Ruth Clusen.

6. The Revenue Act of 1971, Pub.L.No.92–178, 85 Stat. 562, *as amended*, Pub.L.No.93–53, 87 Stat. 138, *as amended* FECAA of 1974, *supra* note 2, §§ 403–06, 408 (codified as in 26 U.S.C. §§ 9001–13, 9031–42) [also referred to as Subtitle H]. This Subtitle consists of two parts, Chapter 95 dealing with conventions and general elections for President, and Chapter 96 dealing with matching funds for Presidential primaries. These provisions are loosely termed the "public financing provisions." Parallel proceedings with respect to Subtitle H and constitutional questions pertaining thereto are presently pending before a three-judge district court of this Circuit, *Buckley v. Valeo*, No. 75–0001, D.D.C. That court heard oral argument jointly with this court sitting en banc. This procedure will facilitate presentation to the Supreme Court without the risk of a wrong fork in the road that would lead to a jurisdictional dead end.

7. **§ 437h. Judicial review**

(a) The Commission, the national committee of any political party, or any individual eligible to vote in any election for the office of President of the United States may institute such actions in the appropriate district court of the United States, including actions for declaratory judgment, as may be appropriate to construe the constitutionality of any provision of this Act or of section 608, 610, 611, 613, 614, 615, 616, or 617 of Title 18, United States Code. The district court immediately shall certify all questions of constitutionality of this Act or of section 608, 610, 611, 613, 614, 615, 616, or 617 of Title 18, United States Code, to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc.

(b) Notwithstanding any other provision of law, any decision on a matter certified under subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States. Such appeal shall be brought no later than 20 days after the decision of the court of appeals.

(c) It shall be the duty of the court of appeals and of the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent

cial judicial review provision in FECA) transmitted the entire case to this court.[8] Upon joint motion of the defendants and intervening defendants, we remanded the record for completion of certain evidentiary steps and for the formulation of constitutional questions to be certified to this court.[9] Judge Corcoran, with all counsel cooperating, moved expeditiously. Constitutional questions have now been certified and the parties have addressed them in briefs and oral argument before this court en banc.[10] This novel procedure permits timely appeal to the Supreme Court.

The unique posture of this litigation requires a unique opinion, cast in a structure of twenty-eight constitutional questions or sub-questions, which we either answer or conclude are not ripe for decision. Our order is reprinted for convenience as Appendix A.

The opinion is *per curiam*. That term is conventionally reserved for cases of lesser significance. It also has useful application to cases like this one, where the issues are so significant and far-reaching that the crafting of the opinion reflects the fact of participation of various judges, so that no single judge could fairly be designated as the author. *Compare Nixon v. Sirica*, 159 U.S.App. D.C. 58, 487 F.2d 700 (1973).

We have organized our discussion of the issues in this case into six major sections: a synopsis of the statutory provisions, *in limine* questions, questions concerning contribution and expenditure limitations, questions concerning disclosure requirements, questions concerning public financing provisions, and questions concerning the composition and powers of the newly-established Federal Election Commission. But in order to place this recent legislation in proper perspective, we begin with an overview.

I. *Overview*

The statutory provisions under attack, while separable, were combined by Congress as a comprehensive approach to a set of conditions and abuses that have spread over the years to infect the nation's federal election campaigns. "Speaking broadly, what is involved here is the integrity of our electoral process, and, not less, the responsibility of the individual citizen for the successful functioning of that process. The case thus raises issues not less than basic to a democratic society."[11] These solemn words, uttered in 1957 by Justice Frankfurter in a Supreme Court opinion considering limitations on federal election campaigns, are an apt prologue to our momentous task.

Our task is the more awesome, and these words opportune, in that we are pondering legislation passed and reviewed at a time of transition and crisis. The Nation has experienced the shock waves of momentous revelations concerning events of the last Presidential campaign. It is preparing in 1976 not only for another campaign, but for a time of bicentennial that sharpens our awareness of our heroic experiment in democracy. Abraham Lincoln has immortalized our dedication to the concept

the disposition of any matter certified under subsection (a).

8. Buckley v. Valeo, 387 F.Supp. 135 (D.D.C. 1975).

9. Buckley v. Valeo, ___ U.S.App.D.C. ___, ___ F.2d ___ (D.C.Cir.1975).

10. For a summary history of this litigation see Appendix B.

11. United States v. UAW, 352 U.S. 567, 570 (1957).

of a government of the people, by the people and for the people, our recognition that it is dependent on the consent of the governed and our resolution to take measures to preserve and to vitalize that system. What nourishes and invigorates democracy is the root of widespread popular participation.

No one can doubt the compelling government interest in preserving the integrity of the system of elections through which citizens exercise the core right of a free democracy of selecting the officials who will make and execute the laws under which we all must live.[12] Yet subjection of election campaigns to rules of law means restraints, and those restraints are assailed as a misguided undermining of the constitutional foundations of our free society.

Our vigorous and recurring election campaigns are a pulse beat of the strength of democracy. Keen men of this century have sought to preserve health by intervening against feverish excess. Justice Frankfurter's 1957 opinion recounts the origins of our present legislation in the steps taken around the turn of the century to cope with the abuses spawned by the disparities and aggregations of wealth. We identify some highlights.

The popular feeling that the power of wealth "unduly influenced politics, an influence not stopping short of corruption"[13] led to public disclosure laws. But these "were found to be futile."[14] In quest of more effective measures, Elihu Root proposed that New York prohibit contributions by corporations, to cope with "the great aggregations of wealth" seeking to influence elections toward "the advancement of their interests as against those of the public." He put it:[15]

> It strikes at a constantly growing evil which has done more to shake the confidence of the plain people of small means of this country in our political institutions than any other practice which has ever obtained since the foundation of our Government.

Concern over the size and source of campaign funds in the 1904 campaign "crystallized popular sentiment for federal action to purge national politics of what was conceived to be the pernicious influence of 'big money' campaign contributions. President Theodore Roosevelt quickly responded to this national mood."[16] His annual messages of 1905 and 1906 urged laws to stop political contributions by corporations, and a 1907 law enacting such a measure as to national campaigns was "the first concrete manifestation of a continuing congressional concern for elections 'free from the power of money.'"[17]

In view of the issues now pending, we add and underline President Roosevelt's 1907 address on the need for public financing of election campaigns to effectuate the underlying objective.

> Under our form of government voting is not merely a right but a duty, and, moreover, a fundamental and nec-

12. *See* Wesberry v. Sanders, 376 U.S. 1, 17 (1964): "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live."

13. United States v. UAW, 352 U.S. 567, 570 (1957).

14. *Id.* at 571.

15. *Id.* at 571, *citing Hearings before House Committee on Elections*, 59th Cong., 1st Sess. referring to *E. Root, Addresses on Government & Citizenship*, 143 (Bacon & Scott ed. 1916).

16. 352 U.S. at 572.

17. *Id.* at 575.

essary duty if a man is to be a good citizen. It is well to provide that corporations shall not contribute to Presidential or National campaigns, and furthermore to provide for the publication of both contributions and expenditures. There is, however, always danger in laws of this kind, which from their very nature are difficult of enforcement; the danger being lest they be obeyed only by the honest, and disobeyed by the unscrupulous, so as to act only as a penalty upon honest men. Moreover, no such law would hamper an unscrupulous man of unlimited means from buying his own way into office. There is a very radical measure which would, I believe, work a substantial improvement in our system of conducting a campaign, although I am well aware that it will take some time for people so to familiarize themselves with such a proposal as to be willing to consider its adoption. The need for collecting large campaign funds would vanish if Congress provided an appropriation for the proper and legitimate expenses of each of the great national parties, an appropriation ample enough to meet the necessity for thorough organization and machinery, which requires a large expenditure of money. Then the stipulation should be made that no party receiving campaign funds from the Treasury should accept more than a fixed amount from any individual subscriber or donor; and the necessary publicity for receipts and expenditures could without difficulty be provided.[18]

The tale of measures passed, and to some extent bypassed, is related in Appendix C. It suffices here to say that over a span of almost 70 years Congress enacted a number of limited statutes; provisions for disclosure and reporting of contributions and expenditures were enacted and amended; in due time Congress imposed a ban on contributions by corporations, followed by a ban on contributions by labor unions; successive statutes put limits on the amounts an individual could contribute to candidates for federal office, and in 1939 an absolute limit ($3 million) was put on annual expenditures by national political committees.

The achievements of the statutes were overmatched by what proved to be wholesale circumvention, including notably the invention and proliferation of political committees that purported to be independent and outside the knowledge and control of the candidates and designated campaign committees. The infinite ability to multiply committees eviscerated statutory limitations on contributions and expenditures.[19]

The escalation of the 1972 election and the shock of its aftermath led to a call for comprehensive corrective measures. Congress found that federal election campaigns have become enormously expensive, with costs increasing at an "alarming"[20] rate. An estimated $400 million was spent in 1972 for nomination and election campaigns—almost a 300% increase since 1952, in a period when the consumer price index rose 57.6%. In 1972, Presidential campaign spending

18. H.R.Doc.No.1, 60th Cong., 1st Sess., pt. 1 at XLVII (1910).

19. At oral argument, counsel for plaintiffs noted (Tr. 18) that in the past the law was without restrictions, on contributions and expenditures, in any "effective sense whatever" because of the "infinite ability to multiply" committees.

20. *H.R.Rep.No.*93-1239, 93d Cong., 2d Sess. 3 (1974). *See also S.Rep.No.*93-170, 93d Cong., 1st Sess. 1-2 (1973; *S.Rep.No.*93-689, 93d Cong., 2d Sess. 5 (1974); Findings I, ¶ 88.

alone totaled $94.4 million—up 67 percent from $56.4 million in 1968; up 147 percent from $38.1 million in 1964; and up 247 percent from $27.2 million in 1960. Findings IIA, ¶ 51; I, ¶¶ 89, 93, Brief for Intervening Defendants at 34.

Congress found—in the words of the House Report:

> The unchecked rise in campaign expenditures coupled with the absence of limitations on contributions and expenditures, has increased the dependence of candidates on special interest groups and large contributors. Under the present law the impression persists that a candidate can buy an election by simply spending large sums in a campaign.[21]

The record documents the interaction of ever-increasing campaign expenditures, and reliance on large contributions from monied and special interests. By 1974, as the agreed findings establish, one percent of the people accounted for 90 percent of the dollars contributed to federal candidates, political parties and committees.[22] Just 2-3 percent, the wealthiest people in the country, are responsible for about 95 percent of the financing for Congressional elections.[23]

The sheer volume of special interest group money is enormous. The findings identify for the 1972 and 1974 elections not only the millions of total contributions by labor groups, business groups, health groups and agricultural groups,[24] but also how large they loom to individual candidates.[25]

Plaintiffs say the need to seek contributions is a democratic check on candidates. The contention has some merit, dependent on moderation. In practice, however, candidates were compelled to allot to fund raising increasing and extreme amounts of time and energy. Senator Hollings testified that survival required candidates for national office to "set down a policy where they won't go see people other than those who can give money."[26] Joseph Cole, finance chairman for the Democratic National Committee, testified from his experience in some four or five Presidential campaigns, how dog-tired candidates must arise early in pursuit of large contributions, and continue "all day long and all night long."—"[How] much time do you think a Presidential candidate spends on fund raising? . . . at least 70 percent of his time, and I think all of his waking hours. It is really demeaning, demeaning to go through it."[27]

In advocating public subsidy to relieve candidates of "potentially corroding dependence on personal or family fortune or the gifts of special interest backers," Senator Biden referred to the pressure on candidates to avoid speaking out on issues lest campaign funds be cut off.[28]

21. *H.R.Rep.No.*93-1239, *supra* note 20, at 3.

22. Findings I, ¶ 100.

23. 120 Cong.Rec. H 7919 (daily ed. Aug. 8, 1974) (remarks of Cong. Udall).

24. Findings I, ¶ 101-03; II A, 77-90, 96-99.

25. Findings II A, ¶ 100-03.

26. *Hearings on S. 382 Before the Subcomm. on Privileges and Elections of the Senate Comm. on Rules and Administration*, 92d Cong., 1st Sess. 78 (1971). *See also* Findings I, ¶ 170.

27. *Hearings on H.R. 7612 and S. 372 Before the Subcomm. on Elections of the House Comm. on House Administration*, 93d Cong., 1st Sess. 138 (1973).

28. 119 Cong.Rec. 25984-95 (1973). During the Senate debate, Senator Humphrey similarly stated:

> Those of us who run for office can profess that the campaign contributions we receive do not in any way control our votes, but I venture to say that not many believe it.

Senator Russell Long pinned the pervasive problem in these words: [29]

> [W]hen you are talking in terms of large campaign contributions . . . the distinction between a campaign contribution and a bribe is almost a hair's line difference . . . .

The quality of political contributions as denotive of freedom of thought and association must be reappraised realistically, so far as large contributions are concerned, in the light of the common practice of many large donors of contributing to both candidates for the same office. The agreed findings establish that during the 1974 Congressional elections, 120 registered interest groups gave contributions on 278 occasions, totaling over $676,000, to two or more candidates running for the same office.[30] Contributions to both parties were made in 1972 by Gulf Oil (illegal contributions—to President Nixon, Senator Jackson, and Congressman Mills), and by American Milk Producers, Inc., a large dairy cooperative whose legal and illegal contributions were made to Nixon, Mills, and Humphrey.[31]

Large contributions are intended to, and do, gain access to the elected official after the campaign for consideration of the contributor's particular concerns.[32] Senator Mathias not only describes this but also the corollary, that the feeling that big contributors gain special treatment produces a reaction that the average American has no significant role in the political process.[33]

The concepts of political trust (trust in government) and its converse, political cynicism and alienation, are the subject of agreed findings. Illustrative is the trend revealed by the polls seeking responses to this question.

> Would you say the government is pretty much run by a few big interests looking out for themselves or that it is run for the benefit of all the people? [34]

	1964	1966	1968	1970	1972	1974
For benefit of all	64.0%	53.0%	51.8%	40.6%	43.4%	21.3%
Few big interests	29.0	34.0	39.2	49.6	48.4	69.9
Other/Depends/Both						
Checked	4.0	6.0	4.6	5.0	2.5	—
Don't Know	3.0	7.0	4.3	4.8	5.8	8.8
TOTAL	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

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120 Cong.Rec. S 4553 (daily ed. March 27, 1974).

29. *Hearings on S. 3496, Amendment No. 732, S. 2006, S. 2965, and S. 3014 Before the Senate Comm. on Finance*, 89th Cong., 2d Sess. 78 (1966).

30. Findings II A, ¶ 104.

31. Findings I, ¶¶ 156, 158, 165.

32. Congress found and the District Court confirmed that such contributions were often made for the purpose of furthering business or private interests by facilitating access to government officials or influencing governmental decisions, and that, conversely, elected officials have tended to afford special treatment to large contributors. *See* S.Rep.No.93-689, 93d Cong., 2d Sess. 4–5; Findings I, ¶¶ 108, 110, 118, 170.

33. Findings I, ¶ 170–71.

34. Center for Political Studies (U. of Michigan) 1964–1972, Market Opinion Research prepared for the Republican National Committee, 1974, included in Findings I, ¶ 155.

Congress and the public had become informed of the various aspects of the 1972 campaign.[35] Revelations of huge contributions from the dairy industry,[36] a number of corporations[37] (illegally) and ambassadors and potential ambassadors,[38] made the 1972 election a watershed for public confidence in the

35. A review of the perception of Congress, and particularly the public, must emphasize the investigation, hearings, and 1974 Report of the Senate Select Committee on Presidential Campaign Activities, chaired by Senator Sam Ervin. Final Report of the Select Comm. on Presidential Campaign Activities, S.Rep.No.93-981, 93d Cong., 2d Sess. (1974) [hereinafter cited as Final Report].

36. Findings I, ¶¶ 117b, 158, 165. Looming large in the perception of the public and Congressmen was the revelation concerning the extensive contributions by dairy organizations to Nixon fund raisers, in order to gain a meeting with White House officials on price supports. Final Report, *supra* note 35 at 581, 592–3. The industry pledged $2,000,000 to the 1972 campaign, a pledge known to various White House officials, with President Nixon informed directly by Charles Colson in September 1970, as acknowledged by the 1974 White House paper. *Id.* at 612–14, 616.

Since the milk producers, on legal advice, worked on a $2500 limit per committee, they evolved a procedure, after consultation in November 1970 with Nixon fund raisers, to break down the $2 million into numerous smaller contributions to hundreds of committees in various states which could then hold the money for the President's reelection campaign, so as to permit the producers to meet independent reporting requirements without disclosure. *Id.* at 615.

On March 23, 1971, after a meeting with dairy organization representatives, President Nixon decided to overrule the decision of the Secretary of Agriculture and to increase price supports. In the meetings and calls that immediately followed the internal White House discussion and preceded the public announcement two days later, culminating in a meeting held by Herbert Kalmbach at the direction of John Ehrlichman, the dairymen were informed of the likelihood of an imminent increase and of the desire that they reaffirm their $2 million pledge. *Id.* at 648 ff, N.B. 664

It is not material, for present purposes, to review the extended discussion in the Final Report on the controverted issue of whether the President's decision was in fact, or was represented to be, conditioned upon or "linked" to, the reaffirmation of the pledge.

37. The findings document lavish contributions by groups or individuals with special interests to legislators from both parties, e. g., by the American Dental Association to incumbent Congressmen in California, Findings IIA, ¶ 111; by H. Ross Perot, whose company supplies data processing for medicare and medicaid programs, to members of the House Ways and Means and Senate Finance Committees, and the House Appropriations Subcommittee for HEW. Findings IIA, ¶¶ 93–95.

The disclosures of illegal corporate contributions in 1972 included the testimony of executives that they were motivated by the perception that this was necessary as a "calling card, something that would get us in the door and make our point of view heard," *Hearings before the Senate Select Comm. on Presidential Campaign Activities*, 93d Cong., 1st Sess. 5442 (1973), (Ashland Oil Co.—Orin Atkins, Chairman) or "in response to pressure for fear of a competitive disadvantage that might result," *id.* at 5495, 5514 (American Airlines—George Spater, former chairman); *see* Findings I, ¶ 105.

The record before Congress was replete with specific examples of improper attempts to obtain governmental favor in return for large campaign contributions. *See* Findings I, ¶¶ 159–64.

38. As for ambassadorships, while the appointment of large contributors is not novel, the Committee's Report exposed scale and volume, and the widespread understanding that such contributions were a means of obtaining the recognition needed to be actively considered. Findings I, ¶ 124. The Final Report identified over $1.8 million in Presidential campaign contributions as ascribable, in whole or in part, to 31 persons holding ambassadorial appointments from President Nixon, and stated that six other large contributors, accounting for $3 million, appear to have been actively seeking such appointment at the time of their contributions. Final Report, *supra* note 35, at 493–94. The fund raisers routinely advised that only the President could guarantee nomination. *Id.* at 495.

On February 25, 1974, Herbert Kalmbach, a principal fund raiser, pleaded guilty to a

electoral system. Such matters dramatize rather than define the widespread concerns over the problem of undue influence. After extensive investigation, Congress concluded that such corrupt and pernicious practices are more likely to occur when there are no effective limits on amount of campaign expenditure. In short, big-spending campaigns pull like a magnetic field.

Congress knew there were no absolute guarantees that its reforms—the combination of strengthened disclosures, shrinkage of total campaign expenditures, and provision of public funds in amounts (hopefully sufficient for the purpose) authorized by taxpayers—would achieve the objective of curbing the excesses of campaign financing permeated by contributions of monied and special interests.

But Congress knew, too, that the perfect can be the enemy of the good, and that inaction, for whatever reason, may breed a noxious reaction. The statute was responsive to Congress's finding of "a definite need for effective and comprehensive legislation in this [campaign finance] area to restore and strengthen public confidence in the integrity of the political process"—confidence that had declined, at least in part, because of campaign financing abuses.[39]

Standard for Review of Campaign Measures Passed by Congress

It is a salient contention of plaintiffs that political contributions and expenditures are so permeated with the freedoms of speech, press and political association[40] guaranteed by the First Amendment that they are not constitutionally subject to restriction in amount.

We disagree. In our view, the pertinent standard is that set forth by the Supreme Court, albeit in another context, in *United States v. O'Brien*, 391 U.S. 367, 376–77 (1968) (footnotes omitted):

> This Court has held that when "speech" and "nonspeech" elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms. To characterize the quality of the governmental interest which must appear, the Court has employed a variety of descriptive terms: compelling; substantial; subordinating; paramount; cogent; strong. Whatever imprecision inheres in these terms, we think it clear that a government regulation is sufficiently justified if it is within the constitutional power of Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

The constitutional power of Congress to regulate federal elections (including the pre-election stages) is extensive.[41] Here the Government has a clear and compelling interest in safeguarding the integrity of elections and avoiding the undue influence of wealth. Both the reality and appearance of electoral corruption justify Congressional intervention.

Ours is a nation that respects the drive of private profit and the pursuit of gain, but does not exalt wealth thereby achieved to undue preference in fundamental rights. The right to vote cannot be conditioned on a poll tax. *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966). No compelling interest justifies restriction of voting on general obligation municipal bonds to real property taxpayers. *Phoenix v. Kolodziejski*, 399 U.S. 204 (1970). In *Bullock v. Carter*, 405 U.S. 134 (1972), the Court held that huge filing fees as a condition of getting on the ballot were an unconstitutional impediment to candidates based on disparity of wealth. Even a moderate fee cannot be required of an impecunious candidate without providing a reasonable alternative means of ballot access. *Lubin v. Panish*, 415 U.S. 709 (1974). The principle of equality in political suffrage rights has the constitutional footing of the "one man, one vote" principle. *Reynolds v. Sims*, 377 U.S. 533, 562 (1964); *Wesberry v. Sanders*, 376 U.S. 1 (1964).

It would be strange indeed if, by extrapolation outward from the basic rights of individuals, the wealthy few could claim a constitutional guarantee to a stronger political voice than the unwealthy many because they are able to give and spend more money, and because the amounts they give and spend cannot be limited.

The Constitution also takes account of the governmental interest in curbing the *appearance* of undue influence, in order to avoid the corrosion of public confidence that is indispensable to democratic survival. In *Civil Service Commission v. Letter Carriers*, 413 U.S. 548, 565 (1973), Justice White articulated this:

> [I]t is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative Government is not to be eroded to a disastrous extent.

There is a positive offset to plaintiffs' invocation of the First Amendment in the presentation by intervening defendants that the statute taken as a whole affirmatively enhances First Amendment values. By reducing in good measure disparity due to wealth, the Act tends to equalize both the relative ability of all voters to affect electoral outcomes, and the opportunity of all interested citizens to become candidates for elective federal office. This broadens the choice of candidates and the opportunity to hear variety of views.

We are not here concerned with a complete ban on political activity—such

charge of violation of 18 U.S.C. § 600, in having promised, in 1971, a more prestigious post to Ambassador (to Trinidad) J. Fife Symington, in return for a $100,000 contribution to be split between 1970 senatorial candidates designated by the White House and Mr. Nixon's 1972 campaign. *Id.* at 492.

39. H.R.Rep.No.93-1239, *supra* note 20, at 4; S.Rep.No.93-689, *supra* note 20, at 4.

40. NAACP v. Button, 371 U.S. 415 (1963); Bates v. Little Rock, 361 U.S. 516 (1960).

41. Burroughs and Cannon v. United States, 290 U.S. 534 (1934); Smiley v. Holm, 285 U.S. 355, 366 (1932); United States v. Classic, 313 U.S. 299 (1941); United States v. UAW, 352 U.S. 567 (1957). *See also*, Civil Serv. Comm'n. v. Letter Carriers, 413 U.S. 548 (1973); United States v. Harriss, 347 U.S. 612 (1954); United Public Workers v. Mitchell, 330 U.S. 75 (1947). The starting point for Congressional authority to regulate federal elections is, of course, Article I, Section 4 of the Constitution, which says in full: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."

as has been adopted for corporations, labor unions, and government employees. In 1973 the Court reaffirmed the ban on government employees on the principle that the balance struck by Congress was permissible, in view of the important interests served, "if the Government is to operate effectively and fairly [and] elections are to play their proper part in representative government . . . ."[42] Here, however, we are not concerned with a ban on political activity, but with a limitation on amount, without any discrimination based on party or orientation of speech or activity.

To the extent that prohibitions and restraints—imposed by the Act in service of the compelling government interest in insuring the integrity of federal elections against undue influence—work incidental restrictions on First Amendment freedoms, these constraints, broadly considered, are necessary to assure the integrity of federal elections.[43]

Plaintiffs rely on a contention, derived from *Shelton v. Tucker*, 364 U.S. 479 (1960), that the legislature's end "can be more narrowly achieved" with "less drastic means" and less restriction on freedoms.

The doctrine of "less drastic means" has particular scope when the court is concerned with the types of regulatory methods used by the legislature. If it is satisfied that some limit on contributions is necessary, a court has no scalpel to probe, whether, say, a $2,000 ceiling might not serve as well as $1,000. On questions of degree, of drawing the line, sound doctrine gives Congress latitude for reasonable judgments[44] unless the degree of regulation is so stark as to border on prohibition.[45]

Ultimately it is plaintiffs' position that the legislation under attack is doomed by its comprehensiveness[46] and that reporting and disclosure are sufficient intrusion. However, the combination of measures reflects a legislative conviction that the intermesh of reinforcing measures is needed to cope with the grave abuses. We see no principled basis on which a court can displace the legislative judgment that reporting and disclosure are necessary, but not sufficient, remedies to achieve the objective of trammel-

42. Civil Serv. Comm'n. v. Letter Carriers, *supra* note 41, 413 U.S. at 564.

43. *Cf.* Shelton v. Tucker, 364 U.S. 479 (1960). In that case, an Arkansas statute required teachers to divulge all of their associational ties. The Court there said: "[E]ven though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose." 364 U.S. at 488 (footnotes omitted). *See also* Talley v. California, 362 U.S. 60 (1960); Cantwell v. Connecticut, 310 U.S. 296 (1940).

44. *See* Jenness v. Fortson, 403 U.S. 431, 441–42 (1971). *Cf.* Steward Machine Co. v. Davis, 301 U.S. 548, 584 (1937); Carmichael v. Southern Coal Co., 301 U.S. 495, 510–12 (1937).

45. See text and note at note 49 *infra*.

46. Traditionally, commentators and political reformers have suggested four methods of regulation to insure that "big money" does not wield undue influence in political campaigns or upon elected officials: (1) limits on individual contributions, (2) limits on overall spending in a campaign, (3) disclosure, and (4) public financing of elections. The present body of law (previous law, the surviving portions of the 1971 Act, the 1974 Amendments and Subtitle H *supra* at notes 2 and 6) provides a blend of all four approaches in the belief that the elements will buttress each other. The total package may trench less upon fundamental rights than sole reliance upon a single reform strategy, or upon a different mix of them.

ing "the pernicious influence of 'big money' campaign contributions."[47] The judgments of Theodore Roosevelt and Elihu Root[48] have been borne out by our experience—for in large part the circumvention of this century's legislation has led in practice to little more than reporting requirements. If to some extent more recent measures would have closed earlier gaps, there remains the inherent dilemma of handling the familiar phenomenon of contributions consummated and reported in the closing stages of a campaign. More important still is the legislative conviction that full reporting will not cope with the undue influence problem inherent in the conditions of the 1970's, with massive campaigns escalating in volume, and candidates increasingly driven to concentrate on ever-mounting contributions. The wiles of ambitious office seekers and their supporters are not easily cabined.

The provisions for public financing, which will be discussed in some detail, are not to be viewed in isolation, but as part of a series of reinforcing measures to protect elections against the abuse of corruption and undue influence. So, too, with the mechanism provided by Congress for monitoring its objectives—the Federal Election Commission. Certain constitutional questions are presented by this agency's structure, and they will be considered. In assessing the past ineffectiveness of federal election legislation, Congress was rightfully concerned with the need for continuous bi-partisan monitoring, and with the problems posed if total responsibility is assigned to a President whose election may be the product of practices that demand review.

Defendants go too far in saying that this is ordinary legislation, entitled to the conventional presumption of validity that would be applicable, say, to economic regulation. In view of the interests involved, both the compelling government interest needed to sustain such provisions, and the associational freedoms that are impinged, strict judicial scrutiny of the challenged provisions is appropriate.

The need for exacting judicial scrutiny is underscored by the plaintiffs' contention that the legislation is a composite of measures that serve the interests of the "ins"—members of Congress already elected—in resisting the incursions of the "outs." Such a contention, if substantial, is a warning signal that dilutes the deference courts give to legislatures, at least until the matter is painstakingly considered. In any event, we are aware that serious constitutional questions are raised by measures that may inhibit potential candidates.[49] And in pondering the certified questions we have closely scrutinized plaintiffs' contentions.

In the light of this scrutiny, we do find one section, 2 U.S.C. § 437a, unconstitutional on First Amendment right of association and free speech grounds. Section 437a was injected by the Conference Committee, is not a core section and is plainly severable from the balance of the legislation. With this exception, it is the view of the court, considering

47. United States v. UAW, 352 U.S. 567, 572 (1957).

48. *See* text at notes 15–18 *supra*.

49. *E. g.*, Bullock v. Carter, 405 U.S. 134 (1972) (candidates excluded by filing fees); Williams v. Rhodes, 393 U.S. 23 (1968) (third parties discouraged by ballot access requirements); Gould v. Grubb, 44 U.S.L.W. 2035 (Calif. July 7, 1975) (incumbents improperly advantaged by first place on ballot; strict judicial scrutiny appropriate because the classification imposes a " 'real and appreciable impact' on the equality, fairness and integrity of the electoral process."

only those challenged provisions now ripe for judicial examination because they exert an "inhibitory effect" [50] by their very existence, that the core provisions of the challenged acts do not violate the First Amendment's guarantees of fundamental freedoms. We discuss them briefly below, especially those provisions the facial meaning of which has given us difficulty; we leave for future litigation framed in the context of concrete facts the validity of other provisions and of all provisions as applied.

50. We use the term "inhibitory effect" throughout to indicate the impact of a particular provision upon those planning and conducting campaigns for federal office. A finding of such inhibitory effect confers ripeness upon a constitutional question certified to us under § 437h, we believe, because there are practical and equitable reasons not to require these plaintiffs to violate the criminal law or to await further developments in order to obtain constitutional review. *Cf.* Dombrowski v. Pfister, 380 U.S. 479, 491 (1965): "We believe that those affected by a statute are entitled to be free of the burdens of defending prosecutions, however expeditious, aimed at hammering out the structure of the statute piecemeal, with no likelihood of obviating similar uncertainty for others." Here, the provisions as to which we find inhibitory effect operate closely in conjunction with each other to provide a broad regulatory scheme. To deny ripeness because any or all had not been specifically violated, or to rule only upon those which had been directly violated, would be to break the circle of regulation. Further, in light of the events of Watergate, and the arguably low repute in which the political profession may now be held by the public, it is unreasonable for this court to require a candidate for public office to begin his campaign by having himself criminally charged with violation of FECA. It is more likely that if that were the threshold for "case or controversy," a wary politician would absorb any "chilling effect" of the new regulatory scheme sooner than come to public attention as merely another campaign law violator (the delicacies of test cases perhaps not being well reported or understood). Whereas "chilling effect" is a legal conclusion, "inhibitory effect" is rather a finding that there is a sufficient nexus between a plaintiff with statutory standing and the provision being attacked to constitute a "case or controversy."

II. *Synopsis of the Key Provisions of the Challenged Acts*

Because the statutory provisions in suit are complex, comprehensive, and interrelated, we present a brief outline of the statutory framework before turning to the certified constitutional questions.

Contribution and Expenditure Limitations

A person [51] may make a contribution [52]

51. 18 U.S.C. § 591(g) defines a "person" and "whoever" to mean "an individual, partnership, committee, association, corporation, or any other organization or group of persons."

52. *Id.* § 591(e) provides:

> (e) "contribution"—
>
> (1) means a gift, subscription, loan, advance, or deposit of money or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business, which shall be considered a loan by each endorser or guarantor, in that proportion of the unpaid balance thereof that each endorser or guarantor bears to the total number of endorsers or guarantors), made for the purpose of influencing the nomination for election, or election, of any person to Federal office or for the purpose of influencing the results of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President of the United States;
>
> (2) means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for such purposes;
>
> (3) means funds received by a political committee which are transferred to such committee from another political committee or other source;
>
> (4) means the payment, by any person other than a candidate or a political committee, of compensation for the personal services of another person which are rendered to such candidate or political committee without charge for any such purpose; but
>
> (5) does not include—
>
> (A) the value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee;
>
> (B) the use of real or personal property and the cost of invitations, food, and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual's residential premises for candidate-related activities;
>
> (C) the sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if such charge for use in a candidate's campaign is at least equal to the cost of such food or beverage to the vendor;
>
> (D) any unreimbursed payment for travel expenses made by an individual who on his own behalf volunteers his personal services to a candidate; or
>
> (E) the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any public office for which an election is held in the State in which such committee is organized, except that this clause shall not apply in the case of costs incurred by such committee with respect to a display of any such listing made on broadcasting stations, or in newspapers, magazines or other similar types of general public political advertising;
>
> to the extent that the cumulative value of activities by any person on behalf of any candidate under each of clauses (B), (C), and (D) does not exceed $500 with respect to any election.

of up to $1000 to a candidate [53] for a federal office [54] in his or her primary race, and another contribution of up to $1000 for his or her general election. 18 U.S.C. § 608(b)(1). This is because the law treats general, special, primary, and runoff elections as separate, distinct elections. *Id.* § 591(a). There is an exception to this rule for the various state Presidential primaries, which are all treated as a single primary for contribution purposes only. *Id.* § 608(b)(5).[55]

The law allows an individual to make contributions of up to $25,000 in any calendar year, *id.* § 608(b)(3), which would mean, for example, $1000 for a Presidential candidate's primary, $1000 for a Presidential candidate's November election, and up to twenty-three other primary or general election contributions of up to $1000 to candidates for federal office (Senate and House) around the country. For purposes of the $25,000

53. *Id.* § 591(b) provides:

> (b) "candidate" means an individual who seeks nomination for election, or election, to Federal office, whether or not such individual is elected, and, for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, to Federal office, if he has (1) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, or (2) received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office.

54. *Id.* § 591(c) provides:

> (c) "Federal office" means the office of President or Vice President of the United States, or Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

55. *Id.* § 608(b)(5) reads in full: "The limitations imposed by paragraphs (1) and (2) of this subsection shall apply separately with respect to each election, except that all elections held in any calendar year for the office of President of the United States (except a general election for such office) shall be considered to be one election."

ceiling, the law treats all contributions made in connection with the same election season as made in the year of the general election. *Id.* And it treats contributions to a Vice Presidential candidate as contributions to his Presidential running mate. *Id.* § 608(b)(4)(B). No contribution of currency may, in the aggregate, exceed $100. *Id.* § 615(a).

In addition to making political contributions of up to $25,000 per year, a person may make unlimited outlays to voice his views on public issues and campaign issues, subject only to the limitation that if he makes an expenditure[56] "relative

56. *Id.* § 591(f) provides:

(f) "expenditure"—

(1) means a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business), made for the purpose of influencing the nomination for election, or election, of any person to Federal office or for the purpose of influencing the results of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President of the United States;

(2) means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure; and

(3) means the transfer of funds by a political committee to another political committee; but

(4) does not include—

(A) any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate;

(B) nonpartisan activity designed to encourage individuals to register to vote or to vote;

(C) any communication by any membership organization or corporation to its members or stockholders, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any person to Federal office;

(D) the use of real or personal property and the cost of invitations, food, and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual's residential premises for candidate-related activities;

(E) any unreimbursed payment for travel expenses made by an individual who on his own behalf volunteers his personal services to a candidate;

(F) any communication by any person which is not made for the purpose of influencing the nomination for election, or election, of any person to Federal office;

(G) the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any public office for which an election is held in the State in which such committee is organized, except that this clause shall not apply in the case of costs incurred by such committee with respect to a display of any such listing made on broadcasting stations, or in newspapers, magazines or other similar types of general public political advertising;

(H) any costs incurred by a candidate in connection with the solicitation of contributions by such candidate, except that this clause shall not apply with respect to costs incurred by a candidate in excess of an amount equal to 20 percent of the expenditure limitation applicable to such candidate under section 608(c) of this title; or

(I) any costs incurred by a political committee (as such term is defined by section 608(b)(2) of this title) with respect to the solicitation of contributions to such political committee or to any general political fund controlled by such political committee, except that this clause shall not apply to exempt costs incurred with respect to the solicitation of contributions to any such political committee made through broadcasting stations, newspapers, magazines, outdoor advertising facilities, and other similar types of general public political advertising;

to the extent that the cumulative value of activities by any individual on behalf of any candidate under each of clauses (D) or (E) does not exceed $500 with respect to any election.

Part of the comprehensional difficulty of this case arises from overlapping and slightly different definition and usage of terms. Generally, a "contribution" involves the donation of money, services or things to a campaign in such a way as to put them under the control of a candidate or his designated agent. When used in contradistinction to "contribution," "expenditure" means an application of money, services or things to influence the outcome of an election, without placing such money, services or things within the control of a candidate or his agent, and sometimes even without the candidate's tacit approval of the way in which the person allocates those expenditures. Confusion lies in the fact that federal election laws also use the term "expenditure" to mean an outlay by the candidate or his agent from within the fund of money, services or things contributed to the candidate and thus within his control. This explanation is offered to illuminate, but not to supplant, the definitions of "contribution" and "expenditure" found at 2 U.S.C. § 431(e), (f), and 18 U.S.C. § 591(e), (f).

Under the present law, expenditures by individuals are regulated by *id.* § 608(e) and are termed "expenditures relative to a clearly identified candidate." In the now repealed Title 1 of FECA of 1971, *see* note 2 *supra*, the concept of expenditures by individuals in their own name to endorse a candidate for federal office was expressed by use of the ambiguous phrase "on behalf of a candidate," which was substantially criticized in ACLU v. Jennings, 366 F.Supp. 1041, 1052 (D.D.C.1973) (three judge court), *vacated as moot sub nom.* Staats v. ACLU, Inc., 43 U.S.L.W. 3673 (U.S. June 23, 1975). Expenditures by a corporation or labor union (not from a segregated voluntary fund) are strictly forbidden under 18 U.S.C. § 610. Expenditures by a candidate for federal office (or by his agent) must be within the over-all campaign spending limits established in *id.* § 608(c)(1).

to a clearly identified candidate" and "advocating the election or defeat of such candidate" all expenditures relative to that candidate may not exceed $1000. *Id.* § 608(e). There is no provision analogous to the $25,000 ceiling on contributions, so presumably a person may make expenditures of up to $1000 relative to an unlimited number of candidates for federal office.

A political committee[57] may make contributions of up to $5000 to a candidate, provided that the committee has been registered with the Federal Election Commission for more than six months. *Id.* § 608(b)(2).

Candidate expenditure ceilings permit overall spending of $10,000,000 in all Presidential primaries, although in any given state the ceiling is twice the Senatorial primary ceiling. *Id.* § 608(c)(1)(A). Candidates for President in the general election may spend no more than $20,000,000. *Id.* § 608(c)(1)(B). Those seeking nomination for election as Senator may expend only eight cents times the voting age population of the state, or one hundred thousand dollars if that sum is larger. *Id.* § 608(c)(1)(C). In Senatorial general elections, the expenditure limitation is twelve cents times the voting age population, or one hundred fifty thousand dollars if that sum is larger. *Id.* § 608(c)(1)(D). In House races in states entitled to only one Representative, the Senatorial limits apply. *Id.* § 608(c)(1)(C), (D). In all other House races, the candidate may spend seventy thousand dollars in the primary, and the identical sum in the general election. *Id.*

57. 2 U.S.C. § 431(d) and 18 U.S.C. § 591(d) define a "political committee" as "any committee, club, association, or other group of persons which receives contributions or makes expenditures during a calendar year in an aggregate amount exceeding $1,000."

§ 608(c)(1)(E).[58] In addition to the sums specified above, each candidate may spend up to twenty per cent of the applicable expenditure limit under section 608(c) solely for the purpose of soliciting contributions, without those disbursements being considered "expenditures" and therefore without their being counted against the candidate's overall expenditure ceiling. *Id.* § 591(f)(4)(H).

Notwithstanding any of the above provisions or limitations, the national committee of a political party and a state committee or its geographic subdivisions may make the following expenditures with respect to the general elections of affiliated candidates for federal office:

1. For President: not greater than two cents times the voting age population (VAP) of the United States by the national committee only (at the present time, the VAP of the United States is approximately 141 million, providing a sum in excess of $2.8 million).
2. For Senator, or Representative in a state entitled to only one Representative: two cents times the voting age population of the state, or $20,000 if greater.
3. For all other House races: $10,000.

Id. § 608(f). The expenditure ceilings set for candidates and national and state party committees shall be annually adjusted to reflect changes in the Consumer Price Index. *Id.* § 608(d).[59]

As indicated above, no national bank or corporation organized by authority of any law of Congress may make political contributions or expenditures of any sort in any federal, state, or local election. *Id.* § 610. All corporations and labor organizations are prohibited from making any contribution or expenditure in Presidential, Senatorial or House primaries, caucuses, conventions or general elections. *Id.* Voluntary segregated funds to which shareholders of a corporation or members of a labor union contribute are excepted from this ban and treated as political committees. *Id.; see id.* § 591(d).

Section 9008 of Subtitle H limits the national convention expenditures of national committees of major and minor parties to $2 million, adjusted annually for changes in the cost of living. 26 U.S.C. § 9008. The Commission may authorize an exception to this limitation if, "due to extraordinary and unforeseen circumstances, such expenditures are necessary to assure the effective operation of the Presidential nominating convention by such committee." *Id.* § 9008(d)(3).

58. Except that the limit is $15,000 in primary and general elections for Delegate from Guam or the Virgin Islands. 18 U.S.C. § 608(c)(1)(F).

59. *Id.* § 608(d) provides:

> (d) *Adjustment of limitations based on price index.*
>
> (1) At the beginning of each calendar year (commencing in 1976), as there become available necessary data from the Bureau of Labor Statistics of the Department of Labor, the Secretary of Labor shall certify to the Commission and publish in the Federal Register the per centum difference between the price index for the 12 months preceding the beginning of such calendar year and the price index for the base period. Each limitation established by subsection (c) and subsection (f) shall be increased by such per centum difference. Each amount so increased shall be the amount in effect for such calendar year.
>
> (2) For purposes of paragraph (1)—
>
> (A) the term "price index" means the average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics; and
>
> (B) the term "base period" means the calendar year 1974.

In addition to the individual contribution and independent expenditure limits discussed above, the law tightly limits the use of personal and immediate family funds by candidates. No more than $50,000 of such monies can be expended by a candidate for President or Vice President, $35,000 in the case of a Senatorial candidate or a House candidate in a state entitled to only one Representative, and $25,000 in the case of a House candidate in any other state. 18 U.S.C. § 608(a)(1). This ceiling is an overall limit, and thus the candidate may not apply it to each separate stage of the electoral process, *i. e.* nomination, convention, and election. *Id.* Immediate family "means a candidate's spouse, and any child, parent, grandparent, brother, or sister of the candidate, and the spouses of such persons." *Id.* § 608(a)(2).

Disclosure Requirements

Political committees must keep detailed records of individuals contributing in excess of $10, and these nondisclosed records are subject to audit by the Commission. 2 U.S.C. §§ 432, 438. The political committee must disclose the name, occupation and principal place of business of anyone who contributes in excess of $100. *Id.* § 434(b)(2). All persons who contribute or expend in excess of $100 must file with the Commission if their transaction was not with a political committee or candidate. *Id.* § 434(e). Members of Congress, however, are not required to report either as contributions received or expenditures made, the value of photographic or recording services furnished to officeholders by the House and Senate bureaucracies or the national party Congressional committees, except in the year of an election. *Id.* § 434(d).

Persons (other than individuals) who expend funds or do acts directed to the public for the purpose of influencing the election or advocating election or defeat of candidates shall file with the Commission in the same manner as a political committee. *Id.* § 437a. Government publications, news stories, commentaries, and editorials in bona fide publications are exempt. *Id.*

Public Financing

Unlike the contribution and expenditure limitation provisions and the disclosure requirements, which apply to all campaigns for federal elective office, the public financing provisions apply only to contests for the Presidency.

The Presidential Election Campaign Fund, established by section 9006 of Subtitle H, is funded with revenue monies that are transferred to the Fund by the Secretary of the Treasury in accord with the wishes of taxpayers checking off one and two dollar sums on their income tax returns under 26 U.S.C. § 6096. Individuals and joint taxpayers may express only a desire to transfer monies to the Fund, or to withhold them; unlike earlier proposals, the statute does not authorize them to indicate a candidate or party preference.

Federal funds are to be applied to three stages of ballot access and election in the Presidential campaign: Presidential primaries, nominating conventions, and the general election itself. Pursuant to priorities established in *id.* §§ 9008(a), 9037(a), monies must first be expended to finance the national nominating conventions, then the general election, and, if sums remain, the primary races.

Chapter 95 of Subtitle H establishes three categories of parties—major parties, minor parties, and new parties—for the purpose of allocating monies from

the Presidential Election Campaign Fund. A major party is defined as one whose candidate in the preceding Presidential election received 25 percent or more of the total popular vote. *Id.* § 9002(6). A minor party is defined as one whose candidate for President in the previous election received 5 percent or more of the popular vote, but less than 25 percent. *Id.* § 9002(7). All other parties are deemed "new parties." *Id.* § 9002(8).

Section 9008 of Subtitle H, which limits major party convention spending to $2 million, provides an identical sum as the public funding entitlement of a major party for its national convention. The convention financing entitlement of a minor party is determined by computing the ratio between the minor party's share of the previous popular vote and the average share of all major parties. No comparable funding is provided for nominating conventions for new parties, or for parties which choose not to conduct a convention, or for independent candidacies. Major and minor parties may receive payments beginning on July 1 of the year prior to the convention. *Id.* § 9008(e).

The major-minor-new party division, which attempts to apportion public funding for conventions without allowing raids upon the Fund by wholly frivolous or doomed candidacies, is also used to establish threshold requirements for general election funding. A provision of Subtitle H provides equal general election funding of $20 million for all major party candidates. *Id.* § 9004(a). As a condition of public funding, however, a candidate must agree to furnish to the Commission, upon request by the Commission, certain books, records, and evidence of qualified expenses (defined at *id.* § 9002(11)), and also to submit to a Commission audit of his qualified campaign expenses. *Id.* § 9003(a). Further, a major party candidate may not incur qualified campaign expenses in excess of his public funding entitlement. *Id.* § 9003(b)(1). And a major party candidate must certify that he will not accept private funding, except to the extent that the Fund is incapable of providing the full entitlement of public monies. *Id.* § 9003(b)(2).

The entitlement of the minor party candidates to public funding in the general election is computed on the basis of the ratio of the minor party's share of the popular vote in the previous Presidential election to the average share of the major parties. *Id.* § 9004(a)(2)(A). Unlike major party candidates, those of minor parties, who are not entitled to full public funding, need not certify that they will not accept private funding, but must certify that they will abide by the overall Presidential expenditure ceiling. *Id.* § 9003(c).

Subtitle H also provides for retroactive payments to candidates of minor or new parties who either garner more votes than their track record would have indicated (minor parties) or who had no previous track record (new parties). To discourage frivolous campaigns designed to obtain public funding, 5 percent of the total popular vote is the minimum cutoff for public financing, and candidates who fail to meet that cutoff are not entitled to retroactive funding. Minor party candidates receiving pre-election funding are entitled, post-election, only to the difference between the entitlement based upon previous track record and the entitlement reckoned on actual vote count. *Id.* § 9004(a)(3).

Subtitle H establishes different paths to general election funding by defining "candidate" in two different ways: either the nominee of a major party, or an individual qualified to have his name (or those of electors pledged to him) on the ballot of 10 or more states. *Id.* § 9002(2). Thus, while candidacies of independents, new parties, or minor parties not holding conventions are not entitled to any analog of public funding for conventions, they may be entitled to general election funding (albeit after the election in the case of a nonestablished candidacy).

The third stage of the Presidential selection process which may receive public funding is the nominating primary (actually a series of state-by-state primaries). Because the number of participants is largest at this earliest stage of a campaign, the law imposes stringent threshold requirements to restrict public expenditures to the category of serious contenders.

Chapter 96 of Subtitle H is known as the Presidential Primary Matching Payment Account Act. As with general election funding, certification that the candidate will abide by the overall and state-by-state expenditure ceilings is a prerequisite for eligibility. *Id.* § 9033. Public payments for primaries draw upon a simple matching fund; for every qualified dollar raised in private contributions, the Account will give the candidate one dollar in public funds. Although every eligible candidate is entitled to receive contributions of up to $1000 from every individual, 18 U.S.C. § 608(b)(1), the Act provides matching funds only for the first $250 of each contribution. 26 U.S.C. § 9034(a).

The threshold formula is also somewhat complex. Chapter 96 clearly deems eligible for matching funds only a candidate "seeking nomination *by a political party* for election to the office of President of the United States." *Id.* § 9033(b)(2) (emphasis added). Thus, any candidate claiming to pursue an independent (nonparty) route to the ballot is ineligible for this portion of public financing. To be eligible for matching, a candidate is required to have raised $5000 in private primary contributions in each of at least 20 states, and only the first $250 of any person's contribution counts toward this $5000.

The public funding provisions of Subtitle H manifestly dovetail with the contribution and expenditure ceilings set in FECA, and they should be viewed as complementary stratagems.

III. *In Limine Questions*

Our first inquiry must be into the meaning and application of the major review provision of FECA, Section 315(a), codified as 2 U.S.C. § 437h.[60] By its plain words, the first sentence is a broad grant of legislative standing to sue,[61] embracing any individual eligible to vote in any election for the office of President. However, this does not entitle the eligible plaintiffs to raise any conceivable constitutional issue with respect to the Act and the relevant criminal sections, no matter how remote or speculative. We perceive no congres-

60. The full text of 2 U.S.C. § 437h is reprinted at note 7 *supra*.

61. The first sentence provides:

> (a) The Commission, the national committee of any political party, or any individual eligible to vote in any election for the office of President of the United States may institute such actions in the appropriate district court of the United States, including actions for declaratory judgment, as may be appropriate to construe the constitutionality of any provision of this Act or of section 608, 610, 611, 613, 614, 615, 616, or 617 of title 18, United States Code.

sional intent to waive article III's requirement that there be a present "case or controversy."[62] The declaratory judgment, often seen as the outer limits of article III jurisdiction, nevertheless requires that there be an actual controversy.[63]

In answer to Constitutional Question No. 1,[64] therefore, we reply that since nothing in the first sentence of Section 437h must be read to require rendering an advisory opinion, no violation of the "case or controversy" requirement of article III, section 2 appears. Congress was concerned with the inhibitory effect of a massive rearrangement of regulations operating upon federal campaigns and elections,[65] and wanted election participants to be permitted expeditiously to test the facial validity of limitations and requirements imposed by the challenged Acts. Consistent, however, with the underlying need for "case or controversy," actions are not to be decided unless the inhibitory effects of the challenged provisions are "definite and concrete," "touching the legal relations of parties having adverse legal interest," and "admitting to specific relief through a decree of conclusive character."[66]

Seen through the lens of "inhibitory effect," Question No. 2[67] may be answered, "Yes, subject to considerations of ripeness." Each of the plaintiffs has shown enough injury to maintain a "case or controversy" as to one or more issues—but not for all issues, since a number of issues are held not ripe for resolution in the factual context underlying certification.

IV. *Contributions and Expenditure Limitations*

Limitations on Contributions

The ample power of Congress to regulate federal elections[68] embraces, in our view, the power to adopt per candidate and over-all limitations on the amount that an individual or political committee may contribute in the context of federal elections and primaries.

Question 3(b)[69] certifies the question whether FECA's limitations on contributions to or for a candidate are constitutional. We believe that in the context of past abuses and present needs the statutory contribution limit of $1,000 per candidate per election[70] (with primary and general elections counted as two separate elections)[71] serves a compelling governmental interest. Nor do we find constitutionally infirm the provision limiting to $25,000 the total contributions permitted in any calendar year.[72]

62. Article III, section 2 of the Constitution provides, in pertinent part: "The judicial power shall extend to all Cases, in Law and Equity, arising under this Constitution [and] the Laws of the United States . . ."

63. Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 240-41 (1937): "The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." [citations omitted]

64. 1. Does the first sentence of § 315(a) of the Federal Election Campaign Act, *as amended*, 2 U.S.C. § 437h(a), in the context of this action, require courts of the United States to render advisory opinions in violation of the "case or controversy" requirement of Article III, § 2, of the Constitution of the United States?

65. *See* 120 Cong.Rec. S5707-08 (daily ed. April 10, 1974). (Remarks of Senator Buckley). Senator Buckley's expressed concerns dealt chiefly with the constitutionality of direct dollar limitations on overall campaign expenditures.

66. *See* Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 240-41 (1937).

67. 2. Has each of the plaintiffs alleged sufficient injury to his constitutional rights enumerated in the following question to create a constitutional "case or controversy" within the judicial power under Article III?

68. *See* note 41 *supra*.

69. 3. Does any statutory limitation, or do the particular limitations in the challenged statutes, on the amounts that individuals or organizations may contribute or expend in connection with elections for federal office violate the rights of one or more of the plaintiffs under the First, Fifth, or Ninth Amendments or the Due Process Clause of the Fifth Amendment of the Constitution of the United States?

(b) Does 18 U.S.C. § 608(b) violate such rights, in that it forbids the solicitation, receipt or making of contributions on behalf of political candidates in excess of the amounts specified in 18 U.S.C. § 608(b)?

70. 18 U.S.C. § 608(b) provides in part:

(1) Except as otherwise provided by paragraphs (2) and (3), no person shall make contributions to any candidate with respect to any election for Federal office which, in the aggregate, exceed $1,000.

(2) No political committee (other than a principal compaign committee) shall make contributions to any candidate with respect to any election for Federal office which, in the aggregate, exceed $5,000. Contributions by the national committee of a political party serving as the principal campaign committee of a candidate for the office of President of the United States shall not exceed the limitation imposed by the preceding sentence with respect to any other candidate for Federal office. For purposes of this paragraph, the term "political committee" means an organization registered as a political committee under section 303 of the Federal Election Campaign Act of 1971 [2 U.S.C. § 433] for a period of not less than 6 months which has received contributions from more than 50 persons and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office.

71. *Id.* § 591(a) provides:

(a) "election" means—

(1) a general, special, primary, or runoff election,

(2) a convention or caucus of a political party held to nominate a candidate,

(3) a primary election held for the selection of delegates to a national nominating convention of a political party, or

(4) a primary election held for the expression of a preference for the nomination of persons for election to the office of President.

72. *Id.* § 608(b) provides in part:

(3) No individual shall make contributions aggregating more than $25,000 in any calendar year. For purposes of this paragraph, any contribution made in a year other than the calendar year in which the election is held with respect to which such contribution was made, is considered to be made during the calendar year in which such election is held.

(4) For purposes of this subsection—

(A) contributions to a named candidate made to any political committee authorized by such candidate, in writing, to accept contributions on his behalf shall be considered to be contributions made to such candidate; and

(B) contributions made to or for the benefit of any candidate nominated by a political party for election to the office of Vice President of the United States shall be considered to be contributions made to or for the benefit of the candidate of such party for election to the office of President of the United States.

(5) The limitations imposed by paragraphs (1) and (2) of this subsection shall apply separately with respect to each election, except that all elections held in any calendar year for the office of President of the United States (except a general election for such office) shall be considered to be one election.

(6) For purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient.

Limitations on Independent Expenditures Relative to a Clearly Identified Candidate

Question 3(d) [73] inquires as to the validity of the $1,000 limitation upon expenditures "relative to a clearly identified candidate," [74] (as distinguished from contributions [75]).

This provision is new, and its importance arises from the strict limitation in FECA upon contributions for the benefit of a candidate, whether made directly, to an agent, or to any political committee supporting him. 18 U.S.C. § 608(b)(6). Prior to FECA, the limitations on contributions were widely circumvented by the multiplication of so-called independent committees. With FECA's closing of this loophole, Congress foresaw another: that large independent expenditures by individuals and groups advocating the candidate's election or urging defeat of his opponent might effectively circumvent the individual contribution limitations of section 608(b) and the candidate expenditure ceilings of section 608(c). An expenditure may obviously inure to the benefit of a candidate even though the expenditure was not directed by the candidate and the candidate was not in control of the expenditures or of the goods or services purchased.

We hold that the limitation on expenditures relative to a clearly identified candidate is a necessary and constitutional means of closing a loophole that would otherwise destroy the effectiveness of other statutory provisions.[76] But section 608(e) is a loophole-closing provision only, and it bars only those expenditures directly relative to a clearly identified candidate. We underline the statute's phrase "advocating the election or defeat of such candidate" and give it a restrictive reading.

Section 608(e) parallels the general $1,000 limit on contributions so as to cover an expenditure by a person that is "relative to a clearly identified candidate" even though it was not made at

73. 3(d) Does 18 U.S.C. § 608(e) violate such rights, in that it limits to $1,000 the independent (not on behalf of a candidate) expenditures of any person relative to an identified candidate?

74. *Id.* § 608(e) provides:

(1) No person may make any expenditure (other than an expenditure made by or on behalf of a candidate within the meaning of subsection (c)(2)(B)) relative to a clearly identified candidate during a calendar year which, when added to all other expenditures made by such person during the year advocating the election or defeat of such candidate, exceeds $1,000.

(2) For purposes of paragraph (1)—

(A) "clearly identified" means—

(i) the candidate's name appears;

(ii) a photograph or drawing of the candidate appears; or

(iii) the identity of the candidate is apparent by unambiguous reference; and

(B) "expenditure" does not include any payment made or incurred by a corporation or a labor organization which, under the provisions of the last paragraph of section 610, would not constitute an expenditure by such corporation or labor organization.

75. We note here, in the event that our treatment above and in Part II of this opinion has not made it abundantly clear, that a person need not choose between making a maximum "contribution" of $1,000 to a candidate, and making a maximum "expenditure" of $1,000 "relative to [that same] clearly identified candidate." A person can make a $1,000 contribution to a candidate (assuming he does not exceed the $25,000 ceiling) even if he has already made a $1,000 expenditure "relative to [that] clearly identified candidate."

76. *See* United States v. UAW, 352 U.S. 567, 581, 583, 585 (1957) (considering Congressional attempt to close loopholes in the ban on corporate and union campaign contributions); United States v. CIO, 335 U.S. 106, 115, 122 (1948) (same).

the request of a candidate or his agent or authorized committee. The term "clearly identified" requires a clear reference to the candidate—either by name, photograph, or drawing, or some other unambiguous reference. In our view, in addition to a clear and unambiguous reference, the expenditure must clearly be "advocating the election or defeat of such candidate." Further, expenditures relative to clearly identified candidates stand in contradistinction to expenditures relating primarily to issues of public policy, and the latter are not limited at all by the challenged Acts. An expenditure relating primarily to issues of public policy does not become subject to the $1,000 limitation merely because it contains a clear and unambiguous reference to a candidate, unaccompanied by a message advocating election or defeat; *e. g.*, a list of those in support of or in opposition to the relevant issue position. The test, then, is whether the expenditure (or the publicity which it buys) taken as a whole amounts to a clear advocacy of the election or defeat of a clearly identified candidate.

Limitations on Use of Personal Funds of Candidate and Family

We next consider Question 3(a) [77], which focuses on the provisions in section 608(a) [78] limiting candidate out-of-pocket and out-of-family-pocket expenditures. These provisions were added by the FECA of 1971 [79] to a scheme that did not then include either contribution limits or overall expenditure ceilings.

Plaintiffs attacked these provisions in the First Amended Complaint as too restrictive,[80] and in brief as a lax loophole

77. 3(a) Does 18 U.S.C. § 608(a) violate such rights, in that it forbids a candidate or the members of his immediate family from expending personal funds in excess of the amounts specified in 18 U.S.C. § 608(a)(1)?

78. 18 U.S.C. § 608(a) provides:

(1) No candidate may make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaigns during any calendar year for nomination for election, or for election, to Federal office in excess of, in the aggregate—

(A) $50,000, in the case of a candidate for the office of President or Vice President of the United States;

(B) $35,000, in the case of a candidate for the office of Senator or for the office of Representative from a State which is entitled to only one Representative; or

(C) $25,000, in the case of a candidate for the office of Representative, or Delegate or Resident Commissioner, in any other State. For purposes of this paragraph, any expenditure made in a year other than the calendar year in which the election is held with respect to which such expenditure was made, is considered to be made during the calendar year in which such election is held.

(2) For purposes of this subsection, "immediate family" means a candidate's spouse, and any child, parent, grandparent, brother, or sister of the candidate, and the spouses of such persons.

(3) No candidate or his immediate family may make loans or advances from their personal funds in connection with his campaign for nomination for election, or for election, to Federal office unless such loan or advance is evidenced by a written instrument fully disclosing the terms and conditions of such loan or advance.

(4) For purposes of this subsection, any such loan or advance shall be included in computing the total amount of such expenditures only to the extent of the balance of such loan or advance outstanding and unpaid.

79. *Supra* note 2, § 203.

80. First Amended Complaint ¶¶ 24, 55, 56, 57, 58. Paragraph 56 reads: "The FECA and FECA Amendments violate the rights of one or more of the plaintiffs in that they restrict and inhibit political activity by preventing candidates or their immediate family from expending personal funds where available and necessary, in violation of their rights of freedom of

in the $1,000 contribution ceiling.[81] Clearly, the personal and family funds expenditure limitation of the FECA of 1971 and the contribution limitations of the FECAA of 1974 operate together to avoid any gaping loophole such as plaintiffs suggest. In fact, the out-of-pocket and out-of-family-pocket expenditure provisions merely serve to relax the $1,000 per candidate contribution limit for a candidate and his immediate family. Section 608(a) does not serve, however, to relax the section 608(b)(3) $25,000 contribution ceiling. The latter provision, enacted after the limitation on out-of-pocket and out-of-family-pocket expenditures, contains no exception for a candidate's family members. Thus, a family member's participation in the candidate's § 608(a)(1) expenditures must be deemed a "contribution" under § 608(b), and counted against the family member's § 608(b)(3) $25,000 contribution ceiling.

Similarly, § 608(c),[82] which establishes the candidate's overall campaign expenditure ceilings, was enacted after the FECA of 1971 personal funds limitation and contains no exception for personal and family funds. Thus, a candidate entitled to make expenditures from personal or family funds in his race for federal office must count those expenditures towards the applicable overall expenditure ceiling.

Furthermore, section 608(a) does not affect at all the operation of section 608(e),[83] which was enacted after the FECA of 1971 and which limits expenditures relative to a clearly identified candidate to $1,000. Candidates and their family members are treated identically with other persons; the right of family members to make up to $1,000 in independent expenditures relative to a clearly identified candidate (whether within the family or not) is unfettered.

Thus read, it can be seen that the chief strength of these provisions is that they provide a candidate the opportunity to raise quickly, free of the $1,000 limitation on loans as well as gifts,[84] a portion of the applicable overall expenditure limit for use as either "seed money" or an end-of-campaign countercharge cushion.[85] We believe that Congress may treat the

speech and association guaranteed by the First Amendment to the Constitution."

81. Apparently, plaintiffs had difficulty settling on their position vis-a-vis these provisions, for unlike the seeming approval in the complaint of unlimited personal and family expenditures by the candidate, they say in brief: "By distinguishing between what wealthy candidates are permitted to do and what non-wealthy candidates are permitted to do (*i. e.*, because the latter are barred from receiving contributions in excess of $1,000 from wealthy supporters), the interrelationship of 18 U.S.C. § 608(a) and § 608(b) creates a clear discrimination based on wealth." Brief at 185.

82. 18 U.S.C. § 608(c) is reprinted in full at note 100 *infra*.

83. *Id.* § 608(e) is reprinted in full at note 74 *supra*.

84. A private loan is a "contribution" subject to the $1,000 limitation imposed by 18 U.S.C. § 608(b)(1). For the definition of contribution, see note 52 *supra*.

85. "Seed money," is the politician's and political scientist's term for a critical mass of money to be applied at the outset of a campaign to establish a 'viable' candidacy. For a campaign that intends to rely upon small contributions solicited by direct mail, for example, the seed money would be the cost of an initial direct mailing and associated expenses. An end-of-campaign countercharge cushion is a sum of money or resources laid aside by a candidate and his campaign manager for use late in a campaign to deal with late blossoming accusations or other mud-slinging that could disbalance an election, if not promptly and firmly refuted.

personal monies of a candidate and family monies attributed to a candidate differently, to some extent, from monies raised from the public at large, and could conclude with good reason that the flexibility of section 608(a) provides a candidate is beneficial. Manifestly, the core problem of avoiding undisclosed and undue influence on candidates from outside interests has lesser application when the monies involved come from the candidate himself or from his immediate family. Congress was not acting unreasonably when it chose to make some reasonable distinction on this basis and to give the candidate and family a greater latitude to "contribute" while still subjecting such intrafamily transactions to the flat contribution ceiling and to the limitation upon independent expenditures.

If these provisions governed only the personal funds of candidates, they might favor the wealthy, but given the number of individuals who are considered to be within his "immediate family", even a candidate in modest circumstances obtains the flexibility to raise useful sums, while a wealthy one is restricted by the family ceiling as to the percentage of family assets that may be brought to bear. Moreover, the ratio of permitted family expenditures to overall expenditure ceilings is such that in all federal election campaigns not wholly publicly-funded, a candidate desiring to conduct a hard-hitting campaign will be compelled to go to the populace to raise most of his funds. Thus, section 608(a) establishes additional candidate options without raising barriers to more modestly circumstanced candidacies and without substantially undermining movement toward equalized spending by very rich and very poor candidates.

Limitations on Volunteers' Incidental Expenses

Question 3(c)[86] asks whether constitutional rights are violated by the provisions of 18 U.S.C. § 591(e)[87] and

86. 3(c) Do 18 U.S.C. §§ 591(e) and 608(b) violate such rights, in that they limit the incidental expenses which volunteers working on behalf of political candidates may incur to the amounts specified in 18 U.S.C. §§ 591(e) and 608(b)?

87. Section 591(e) provides that "contribution":

(5) does not include—

(A) the value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee;

(B) the use of real or personal property and the cost of invitations, food, and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual's residential premises for candidate-related activities;

(C) the sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if such charge for use in a candidate's campaign is at least equal to the cost of such food or beverage to the vendor;

(D) any unreimbursed payment for travel expenses made by an individual who on his own behalf volunteers his personal services to a candidate; or

(E) the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any public office for which an election is held in the State in which such committee is organized, except that this clause shall not apply in the case of costs incurred by such committee with respect to a display of any such listing made on broadcasting stations, or in newspapers, magazines or other similar types of general public political advertising;

§ 608(b),[88] which limit the incidental expenses that volunteers working in a political campaign may incur to amounts specified in the statute. As background, we note that the challenged provisions treat volunteer campaign assistance differently from the donation of money. We believe that it is rational for Congress to do so, because the history of campaign abuses recently brought to light reflects major abuses in campaign financing, not in volunteer activities. Plaintiffs contend that donation of money and volunteering of services must be treated similarly because they are substantially fungible. But we believe that the differences outweigh the similarities, particularly with respect to the potential for abuse, and that those differences are a valid basis for differential treatment. The possibility of abuse in volunteer activities is at present conjectural and speculative. When and if such abuses develop, the court, taking into account whatever Congress does or fails to do, can consider such legal attacks as may then lie.

With the basis for this distinction in mind, we turn to the specific issue raised by the certified question. Under section 591(e)(5)(A), "the value of services provided without compensation by individuals who volunteer a portion or all of their time" is specifically excluded from the definition of "contribution." Thus, no estimate is made of the dollar worth of a volunteer's time nor is that amount counted against the volunteer's section 608(b) per candidate contribution limitation of $1,000. But certain categories of financial outlays by volunteers are excluded from the definition of "contribution" *only to the extent that they do not exceed* $500. Thus, if a volunteer provides a candidate or political committee with coffee-klatch type functions in the volunteer's residence, *see id.* § 591(e)(5)(B), or supplies food or beverages to the campaign at cost (thereby foregoing a normal vendor's profit), *see id.* § 591(e)(5)(C), or makes unreimbursed travel expenses while rendering personal services, *see* § 591(e)(5)(D), the value of those activities will be deemed a contribution from volunteer to candidate to the extent that it exceeds $500. That contribution is then chargeable to the volunteer's section 608(b) limit of $1,000 with respect to the recipient candidate.

It can readily be seen that "contribution" treatment for incidental volunteer expenses in excess of some reasonable amount is a necessary loophole-closing provision, designed to prevent contributions by indirection. To allow a volunteer no financial elbow room would tend to reduce desirable political participation, but the specific sum chosen as the cutoff point for non-contribution treatment is reasonable legislative line-drawing. We view this loophole-closing device in light of the concerns of the Congress, and we conclude that it allows sufficient flexibility for effective volunteer campaign assistance, without opening the door to wholesale circumvention of contribution and expenditure limits.

to the extent that the cumulative value of activities by any person on behalf of any candidate under each of clauses (B), (C), and (D) does not exceed $500 with respect to any election.

[The full text of 18 U.S.C.A. § 591(e) is reprinted at note 52 *supra*.]

88. The full text of 18 U.S.C. § 608(b) is reprinted at notes 70, 72 *supra*.

Limitations on Convention Expenditures

Question 3(f)[89] asks whether Subtitle H violates constitutional rights in that it limits a national committee's expenditures with respect to its national nominating convention for President.[90] That limitation is contained in 26 U.S.C. § 9008(d), which establishes a $2 million ceiling on convention expenditures for both major and minor parties.[91] If public funding is available,[92] major parties are entitled to receive $2 million, and minor parties are entitled to a pro rata share based on voting success in the preceding Presidential election. All entitlements are subject to cost-of-living adjustments.

The primary purpose of a national convention is, of course, to select a party's candidates for President and Vice-President. The national convention, a democratic and open feature of the American political process, is thus a great occasion when the adherents of a party come together from the various states, formally and informally, to weld a national party.

Clearly, the legislation challenged in this suit reflects a recognition by Congress of the value of and need for national nominating conventions. Indeed, in establishing limitations on convention expenditures, Congress sought to assure an adequate source of funds for conducting the convention while at the same time preventing massive convention expenditures that would serve to launch and promote the campaign of its nominees.[93] We do not believe that Congress acted unreasonably in attempting to prevent circumvention of the limitations in section 608 on candidate campaign expenditures, especially given Congressional awareness of the ingenuity displayed in the past in circumventing campaign control measures.

As is often the case with loophole-closing provisions, the question thus becomes one of degree. On the basis of the

89. 3(f) Does § 9008 of the Internal Revenue Code of 1954 violate such rights, in that it limits the expenditures of the national committee of a party with respect to presidential nominating conventions?

90. 26 U.S.C. § 9008(d) provides:

(d) *Limitation of expenditures.*—

(1) *Major parties.*——Except as provided by paragraph (3), the national committee of a major party may not make expenditures with respect to a presidential nominating convention which, in the aggregate, exceed the amount of payments to which such committee is entitled under subsection (b)(1).

(2) *Minor parties.*——Except as provided by paragraph (3), the national committee of a minor party may not make expenditures with respect to a presidential nominating convention which, in the aggregate, exceed the amount of the entitlement of the national committee of a major party under subsection (b)(1).

(3) *Exception.*——The Commission may authorize the national committee of a major party or minor party to make expenditures which, in the aggregate, exceed the limitation established by paragraph (1) or paragraph (2) of this subsection. Such authorization shall be based upon a determination by the Commission that, due to extraordinary and unforeseen circumstances, such expenditures are necessary to assure the effective operation of the presidential nominating convention by such committee.

91. For a definition of major and minor parties see note 151 *infra*. 26 U.S.C. § 9002(6), (7).

92. Our ruling that Congress has the power to provide public funds for national conventions appears in Part VI *infra*.

93. Absent an overall ceiling on convention expenditures, political parties could attempt to achieve a substantial campaign effect through various campaign related activities, such as extending the length of the convention, rearranging the convention to enhance its wind-up, etc.

record before us, especially in light of the fact that no party has challenged the $2 million ceiling as inadequate on the ground that it does not provide sufficient funds with which to conduct a convention, we have no basis for holding that the statutory limitation is unconstitutional.

Time Restriction on Higher ($5,000) Contribution Limit For Political Committees

Question 3(h)[94] asks whether there is a constitutional violation in the statute's requirement, 18 U.S.C. § 608(b)(2),[95] that a political committee be registered for "not less than 6 months" before being entitled to the higher ($5,000) contribution limit under the challenged Acts. Clearly, this provision only incidentally impedes the freedom of association protected by the First Amendment, because it does not prevent individuals from drawing together to act as a political committee at any time. Rather, it is a loophole-closing provision intended to prevent proliferation of dummy committees, each of a few persons, in support of federal candidacies. Otherwise, two or three persons could acquire the $5,000 committee contribution authority of section 608(b)(2) merely by organizing themselves as a political committee. The challenged Act limits such bootstrapping by interposing a six-month protective shield. During the waiting period, such political committees would be subject to the reporting and disclosures provisions of 2 U.S.C. § 434.

Suggestion that "Contribution" Definition Limits News Stories

Question 3(g) asks whether there is a constitutional infirmity in specifically exempting news stories, commentaries, and editorials from limits applied to "expenditures," without a parallel exemption from "contribution" treatment.[96] Plaintiff Human Events, Inc., a publisher of political matter, contends that its First Amendment rights are violated by this unequal statutory treatment. It suggests that it will be exposed to charges of illegal corporate contributions based on publication of copy respecting candidates for federal office. This contention, however, is based on a misunderstanding. The concept of "contribution"[97] extends only to placing something of value into the control of a candidate or his agents. Since a news story, commentary, or editorial is not within the control of the candidate or his agents, it is not a contribution, despite the obvious

94. 3(h) Does 18 U.S.C. § 608(b)(2) violate such rights, in that it excludes from the definition of "political committee" committees registered for less than the period of time prescribed in the statute?

95. 18 U.S.C. § 608(b)(2) provides:

(2) No political committee (other than a principal campaign committee) shall make contributions to any candidate with respect to any election for Federal office which, in the aggregate, exceed $5,000. . . . For purposes of this paragraph, the term "political committee" means an organization registered as a political committee under section 303 of the Federal Election Campaign Act of 1971 [2 U.S.C. § 433] for a period of not less than 6 months which has received contributions from more than 50 persons and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office.

96. 3(g) Do 2 U.S.C. § 431(e) and (f) and 18 U.S.C. § 591(e) and (f) violate such rights, in that they exempt news stories, commentaries, and editorials from the statutory definitions of "expenditure" but not from the statutory definitions of "contribution?"

97. The full text of the definition of contribution, 18 U.S.C. § 591(e), is reprinted in full at note 52 *supra*.

fact that it might redound to his benefit. The plain and simple reality is that Congress had no intention of controlling an independent press by this statute.

Since the concept of "expenditure"[98] is far broader, however, including even spending by a private citizen in support of a candidate where nothing of value is placed within the candidate's control, publishing a news story, commentary, or editorial might arguably constitute an expenditure to benefit a candidate for federal office, and the specific exemption to foreclose that reading therefore makes sense. With the statute thus explained, plaintiffs have no reason to fear exposure to charges of illegal corporate contributions based on the publication of copy respecting a candidate for federal office.

Limitation on Expenditures by Candidates

Question 4(a)[99] asks about limitations upon overall campaign expenditures by candidates, provisions that in large measure track those addressed to contribution limits. Plaintiffs suggest that the governmental interest in preserving the purity of the electoral process by limiting skyrocketing campaign expenditures is not compelling. Moreover, plaintiffs argue that corruption can be controlled by less restrictive measures, such as bribery statutes and disclosure requirements. We disagree, and uphold the expenditure ceilings imposed by 18 U.S.C. § 608(c)[100]

98. The full text of the definition of expenditure, *id.* 591(f), is reprinted in full at note 56 *supra*.

99. 4. Does any statutory limitation, or do the particular limitations in the challenged statutes, on the amounts that candidates for elected federal office may expend in their campaigns violate the rights of one or more of the plaintiffs under the First or Ninth Amendment or the Due Process Clause of the Fifth Amendment?

(a) Does 18 U.S.C. § 608(c) violate such rights, in that it forbids expenditures by candidates for federal office in excess of the amounts specified in 18 U.S.C. § 608(c)?

100. 18 U.S.C. § 608(c) provides:

(c) *Limitations on expenditures.*

(1) No candidate shall make expenditures in excess of—

(A) $10,000,000, in the case of a candidate for nomination for election to the office of President of the United States, except that the aggregate of expenditures under this subparagraph in any one State shall not exceed twice the expenditure limitation applicable in such State to a candidate for nomination for election to the office of Senator, Delegate, or Resident Commissioner, as the case may be;

(B) $20,000,000, in the case of a candidate for election to the office of President of the United States;

(C) in the case of any campaign for nomination for election by a candidate for the office of Senator or by a candidate for the office of Representative from a State which is entitled to only one Representative, the greater of—

(i) eight cents multiplied by the voting age population of the State (as certified under subsection (g)); or

(ii) $100,000;

(D) in the case of any campaign for election by a candidate for the office of Senator or by a candidate for the office of Representative from a State which is entitled to only one Representative, the greater of—

(i) 12 cents multiplied by the voting age population of the State (as certified under subsection (g)); or

(ii) $150,000;

(E) $70,000, in the case of any campaign for nomination for election, or for election, by a candidate for the office of Representative in any other State, Delegate from the District of Columbia, or Resident Commissioner; or

(F) $15,000, in the case of any campaign for nomination for election, or for election, by a candidate for the office of Delegate from Guam or the Virgin Islands.

(2) For purposes of this subsection—

(A) expenditures made by or on behalf of any candidate nominated by a political

as an essential ingredient in the regulatory scheme propounded by this comprehensive legislation, one which reduces the incentive to circumvent direct contribution limits and bans.

From 1911 through the repeal of the Federal Corrupt Practices Act by FECA in 1972, overall expenditure ceilings were in effect for Senate and House races.[101] In the only prosecution ever brought thereunder, ceilings were held unconstitutional as applied to primary elections, on the ground that a party primary was not a federal election. *Newberry v. United States*, 256 U.S. 232, 247, 258 (1921). Federal authority to regulate primaries for federal office was established in the case of *United States* v. *Classic*, 313 U.S. 299 (1941). After *Newberry*, Congress acted to update federal election law, and enacted the Federal Corrupt Practices Act, which contained expenditure ceilings for general elections. Upholding that Act in *Burroughs & Cannon v. United States*, 290 U.S. 534 (1934), the Supreme Court said: "[I]t seems plain that the statute as a whole is calculated to discourage the making and use of contributions for purposes of corruption." *Id.* at 548. Although *Burroughs* did not involve a First Amendment challenge, and although the Court did not specifically discuss the overall expenditure ceilings, the case has been cited with approval by the Supreme Court in upholding the strictures of the Federal Regulation of Lobbying Act against attack on the grounds of denial of freedom of speech and association. *United States v. Harriss*, 347 U.S. 612, 625 (1954). From the repeal of the Federal Corrupt Practices Act in 1972 until the effective date of the FECAA of 1974, Congress tried limitations upon media expenditures (which are presumably easier to track) in place of overall campaign ceilings.[102] In the FECAA of 1974, however, Congress again imposed overall limits.

Plaintiffs suggest that Congress lacks the power to decide when a candidate for office has had "too much communication with the voters." They argue that if the public is to benefit from full and robust debate of public issues and personalities, then the range of debate may not be limited. But given the power of money and its various uses, and abuses, in the context of campaigns, there is a compelling interest in its regulation notwithstanding incidental limitations on

party for election to the office of Vice President of the United States shall be considered to be expenditures made by or on behalf of the candidate of such party for election to the office of President of the United States; and

(B) an expenditure is made on behalf of a candidate, including a Vice Presidential candidate, if it is made by—

(i) an authorized committee or any other agent of the candidate for the purposes of making any expenditure; or

(ii) any person authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate, to make the expenditure.

(3) The limitations imposed by subparagraphs (C), (D), (E), and (F) of paragraph (1) of this subsection shall apply separately with respect to each election.

(4) The Commission shall prescribe rules under which any expenditure by a candidate for Presidential nomination for use in 2 or more States shall be attributed to such candidate's expenditure limitation in each such State, based on the voting age population in such State which can reasonably be expected to be influenced by such expenditure.

101. 2 U.S.C. §§ 241-256 (1970), repealed by FECA of 1971, *supra* note 2, § 405.

102. *See* note 2 *supra*, and Appendix C *infra*.

freedom of speech and political association.

Plaintiffs would buttress their argument by asserting that overall expenditure ceilings also infringe the right of potential donors to participate in the political process, by making it impossible or nugatory for them to give additional dollars to a candidate or campaign which has reached its expenditure limit. This latter argument avails plaintiffs nothing, for 2 U.S.C. § 439a[103] permits an officeholder or successful candidate for federal office to apply unspent contributions to "defray any ordinary and necessary expenses incurred by him in connection with his duties as a holder of Federal office," or to contribute those funds in turn to any organization described in 26 U.S.C. § 170(c), or to use the funds for any other lawful purpose. Such applications of unspent contributions must be disclosed to the Federal Election Commission. Under this provision, the private citizen is not deterred from giving his statutory maximum contribution, even if the maximum has already been spent on the campaign by the candidate. Further, if there are any political advantages to the donee candidate in receiving such donations, or in the association symbolized by accepting them, they can be realized. Overall expenditure ceilings allow the candidate to be selective as to which donors' gifts he will accept.

In the context of overall expenditure ceilings, therefore, a discussion of the rights of the contributor is misplaced; overall expenditure limits primarily bear upon the candidate's putative right to unlimited campaigning and the right of access to the political system for candidates of only modest means, since unlimited spending by an opponent may discourage challengers.

In the broad, our answer to the question concerning the limitation on candidate campaign expenditures is set forth in Part I of this opinion. The material there amply demonstrates a compelling governmental interest, both as to need and public perception of need, that justifies any incidental impact on First Amendment freedoms. Plaintiffs argue that the Congressional objective may be achieved by a refined disclosure statute.[104] In view of the history of federal election laws and their circumvention, we have no principled basis for displacing the considered judgment of Congress that what was required in the national interest was a broader, more comprehensive approach.

103. 2 U.S.C. § 439a provides:

§ 439a. Use of contributed amounts for certain purposes

Amounts received by a candidate as contributions that are in excess of any amount necessary to defray his expenditures, and any other amounts contributed to an individual for the purpose of supporting his activities as a holder of Federal office, may be used by such candidate or individual, as the case may be, to defray any ordinary and necessary expenses incurred by him in connection with his duties as a holder of Federal office, may be contributed by him to any organization described in section 170(c) of Title 26, or may be used for any other lawful purpose. To the extent any such contribution, amount contributed, or expenditure thereof is not otherwise required to be disclosed under the provisions of this title, such contribution, amount contributed, or expenditure shall be fully disclosed in accordance with rules promulgated by the Commission. The Commission is authorized to prescribe such rules as may be necessary to carry out the provisions of this section.

104. Brief at 223: "Indeed, plaintiffs believe that narrowly drawn disclosure requirements would be the proper solution to virtually all of the evils Congress sought to remedy by passing the challenged statutes."

Claims of Discrimination in Favor of Incumbents

We have considered the charge that the limits set by Congress work an undue discrimination in favor of incumbents. Although plaintiffs sought findings in support of this theory, Judge Corcoran properly declined to provide such findings in light of the speculative nature of the assertions. The material available to the court looks both ways.[105] The political scientists draw diametric conclusions from the available information. Plaintiffs contend that only by immense expenditures can an unknown candidate compete. This may be correct for some candidates, in some situations. But it also is true that at other times a newcomer has achieved political momentum without large contributions. In a broad sense, the statute may favor relative newcomers, by limiting the access of incumbents to large donations.[106] Any advantage gained by incumbents from service to their constituents is neither novel nor pernicious. Indeed, this may be a vindication of the principles of democracy.

Plaintiffs say that limits on contributions by individuals, with disclosure, suffice to avoid abuses of large contributions, and there is no warrant for controlling expenditures, with attendant restrictions on communication. Congress was of the view that limitation on expenditures was a key ingredient in control of abuses. Realistically, limitations on contributions and disclosure requirements pose almost insuperable enforcement problems, if not supplemented by limits on expenditures. The huge and escalating expenditures are a magnet for large contributions, and for circumventions. Expenditures must come out in public, at least when significant. Candidates who wish to forge links of association, and widen political appeal, are free to solicit modest contributions without limit. These several considerations provide a validating context for the judgment of Congress that expenditures must be subject to reasonable regulation.

105. Findings IIA, ¶¶ 18–50 give some indication of the possible impact of expenditure ceilings on the campaigns of challengers and incumbents. They compare actual expenditures in 1972 and 1974 races against the ceilings established by the FECAA of 1974.

The Findings assume that House candidates may make expenditures of $84,000 in the primary period (the $70,000 ceiling plus 20% or $14,000 for expenditures related to fundraising), and a similar amount for the general election, or $168,000 in total. Findings IIA, ¶ 17. The actual expenditures of 1974 House contenders are compared against that ceiling figure in *id.* ¶¶ 18–22. Only 22 of 810 or 2.7 percent of all House candidates exceeded that sum in 1974. *Id.* ¶ 18. All 22 were running on a major party ticket, 10 as incumbents, three as challengers (to incumbents) and nine in races for open seats. *Id.* Of these, seven incumbents won, three lost. One challenger won and two lost, and eight of the heavy spenders won in open races and one lost. *Id.* No minor party or independent exceeded the ceiling figure. *Id.* ¶ 19. Forty major party challengers defeated House incumbents in the November election. Only one of these successful challengers overspent the ceiling. *Id.* ¶ 20. Eighteen of the forty spent less than half that sum, and of the forty winning challengers, 18 were outspent by the incumbents whom they defeated. *Id.* Major party challengers were outspent by incumbents in 78% of the races in which incumbents ran. Roughly 83% of the challengers spent less than half the ceiling, and 69% spent less than $50,000. *Id.* ¶ 21.

In Senate races, the Findings assume that a Senate candidate may spend eight cents times the voting age population of the state (VAP) for nomination, 12 cents times the VAP for the general election, or 20 cents times the VAP, plus 20% for fundraising, or 24 cents times the VAP in total. *Id.* ¶ 27. Of the 65 major party candidates for Senate in 1974, 17 exceeded that level. Of that 17, nine were incumbents, four were challengers to incumbents (of whom three were outspent by the incumbents they opposed), and four were candidates in races for open seats. Of that 17, eight incumbents won, one was defeated, one challenger won, and three lost. The candidates for open seats split, 2–2. *Id.* ¶ 28. No minor or independent candidate exceeded the putative ceiling. *Id.* ¶ 29. Only two of 22 major party challengers to incumbents were elected. One exceeded both the limit and his opponent's spending. The other underspent both the limit and his incumbent opponent. *Id.* ¶ 30. In 21 of the 22 races between incumbent and challenger, the incumbent outspent the challenger. *Id.* ¶ 31.

Turning to the 1972 House figures, 20 of 816 or 2.4 percent of all House candidates exceeded the $168,000 ceiling: six were incumbents, five were challengers, and nine ran in open races. Five incumbents won and one lost. One challenger won and four lost, and three running in open races won, to six losers. *Id.* ¶ 40. Ten major party challengers defeated House incumbents; only one such challenger exceeded the limitation. Three spent less than $84,000, and two were outspent by the incumbents they defeated. *Id.* ¶ 42. Major party challengers were outspent by incumbents in 78% of the 321 races involving incumbents and challengers. Approximately 89% of challengers spent less than $84,000, and 77% spent less than $50,000. *Id.* ¶ 43.

In 1972 Senate races, 18 of 66 candidates spent in excess of 24 cents times the VAP. Of these, 7 were incumbents, two were challengers (one of whom was outspent by the incumbent challenged) and nine were in open races. Of these 18, the seven incumbents won, both challengers lost, and the open races split five winners, four losers. *Id.* ¶ 47. No independent or minor party candidate exceeded the ceiling. *Id.* ¶ 48. Five of 24 major party challengers to incumbent Senators won, but none exceeded the limitation. Three of that five outspent their opponents; two were themselves outspent. *Id.* ¶ 49. Nineteen of 25 major party challengers were outspent by incumbents. Of the six who outspent incumbents, three won and three lost. *Id.* ¶ 50.

106. Findings II ¶¶ 55, 58, 63, 73, 83, 92.

V. *Disclosure*

A. *Major Provisions.*

1. General Application

Question 7[107] asks the court to rule on the validity of the provisions in the challenged statutes requiring disclosure, in connection with elections for federal office, of contributions and expenditures in excess of stated cut-off points. Question 7(a)[108] addresses the statutory requirement that political committees keep, and make available for inspection and audit, lists of individuals who contribute more than $10.[109] The major disclosure provi-

107. 7. Do the particular requirements in the challenged statutes that persons disclose the amounts that they contribute or expend in connection with elections for federal office or that candidates for such office disclose the amounts that they expend in their campaigns violate the rights of one or more of the plaintiffs under the First, Fourth, or Ninth Amendment or the Due Process Clause of the Fifth Amendment?

108. 7(a) Do 2 U.S.C. §§ 432(b), (c), and (d) and 438(a)(8) violate such rights, in that they provide, through auditing procedures, for the Federal Election Commission to inspect lists and records required to be kept by political committees of individuals who contribute more than $10?

109. 2 U.S.C. § 432 provides:

(b) *Account of contributions; segregated funds.* Every person who receives a contribution in excess of $10 for a political committee shall, on demand of the treasurer, and in any event within five days after receipt of such contribution, render to the treasurer a detailed account thereof, including the amount of the contribution and the identification of the person making such contribution, and the date on which received. All funds of a political committee shall be segregated from, and may not be commingled with, any personal funds of officers, members, or associates of such committee.

(c) *Recordkeeping.* It shall be the duty of the treasurer of a political committee to keep a detailed and exact account of—

(1) all contributions made to or for such committee;

(2) the identification of every person making a contribution in excess of $10, and the date and amount thereof and, if a person's

sion, section 434(b),[110] is the subject of Question 7(b).[111] This provision requires

> contributions aggregate more than $100, the account shall include occupation, and the principal place of business (if any);
>
> (3) all expenditures made by or on behalf of such committee; and
>
> (4) the identification of every person to whom any expenditure is made, the date and amount thereof and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made.
>
> (d) *Receipts; preservation.* It shall be the duty of the treasurer to obtain and keep a receipted bill, stating the particulars, for every expenditure made by or on behalf of a political committee in excess of $100 in amount, and for any such expenditure in a lesser amount, if the aggregate amount of such expenditures to the same person during a calendar year exceeds $100. The treasurer shall preserve all receipted bills and accounts required to be kept by this section for periods of time to be determined by the Commission.

Id. § 438(a)(8) provides that it shall the the duty of the Commission:

> To make from time to time audits and field investigations with respect to reports and statements filed under the provisions of this subchapter, and with respect to alleged failures to file any report or statement required under the provisions of this subchapter . . .

110. *Id.* § 434(b) provides:

> (b) *Contents of reports.* Each report under this section shall disclose—
>
> (1) the amount of cash on hand at the beginning of the reporting period;
>
> (2) the full name and mailing address (occupation and the principal place of business, if any) of each person who has made one or more contributions to or for such committee or candidate (including the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events) within the calendar year in an aggregate amount or value in excess of $100, together with the amount and date of such contributions;
>
> (3) the total sum of individual contributions made to or for such committee or candidate during the reporting period and not reported under paragraph (2);
>
> (4) the name and address of each political committee or candidate from which the reporting committee or the candidate received, or to which that committee or candidate made, any transfer of funds, together with the amounts and dates of all transfers;
>
> (5) each loan to or from any person within the calendar year in an aggregate amount or value in excess of $100, together with the full names and mailing addresses (occupations and the principal places of business, if any) of the lender, endorsers, and guarantors, if any, and the date and amount of such loans;
>
> (6) the total amount of proceeds from (A) the sale of tickets to each dinner, luncheon, rally, and other fundraising event; (B) mass collections made at such events; and (C) sales of items such as political campaign pins, buttons, badges, flags, emblems, hats, banners, literature, and similar materials;
>
> (7) each contribution, rebate, refund, or other receipt in excess of $100 not otherwise listed under paragraphs (2) through (6);
>
> (8) the total sum of all receipts by or for such committee or candidate during the reporting period, together with total receipts less transfers between political committees which support the same candidate and which do not support more than one candidate;
>
> (9) the identification of each person to whom expenditures have been made by such committee or on behalf of such committee or candidate within the calendar year in an aggregate amount or value in excess of $100, the amount, date, and purpose of each such expenditure and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made;
>
> (10) the identification of each person to whom an expenditure for personal services, salaries, and reimbursed expenses in excess of $100 has been made, and which is not otherwise reported, including the amount, date, and purpose of such expenditure;
>
> (11) the total sum of expenditures made by such committee or candidate during the calendar year, together with total expenditures less transfers between political committees which support the same candidate and which do not support more than one candidate;
>
> (12) the amount and nature of debts and obligations owed by or to the committee, in such form as the Commission may prescribe and a continuous reporting of their debts and obligations after the election at such periods as the Commission may require until such debts and obligations are extinguished, together with a statement as to the circumstances and conditions under which any such debt or obligation is extinguished and the consideration therefor; and
>
> (13) such other information as shall be required by the Commission.

111. 7(b) Does 2 U.S.C. § 434(b)(1)–(8) violate such rights, in that it requires political committees to register and disclose the names, occupations, and principal places of business (if any) of those of their contributors who contribute in excess of $100?

111. See note 111 on next page.

candidates and political committees[112] to disclose the name, occupation, and place of business of any person contributing in excess of $100.

Reporting and disclosure provisions were among the earliest measures passed by Congress (in 1910) and they have persisted, with changes from time to time, to the present day. The validity of such measures was sustained in *Burroughs and Cannon v. United States*, 290 U.S. 534, 547–48 (1934). Although the precise issue there decided was different from those urged today, the *Burroughs* opinion brings out the importance of the underlying governmental interest:

> The power of Congress to protect the election of President and Vice-President from corruption being clear, the choice of means to that end presents a question primarily addressed to the judgment of Congress. . . . Congress reached the conclusion that public disclosure of political contributions, together with the names of contributors and other details, would tend to prevent the corrupt use of money to affect elections. The verity of this conclusion reasonably cannot be denied. When to this is added the requirement . . . that the treasurer's statement shall include full particulars in respect of expenditures,

112. We recognize that there are potential problems with the definitions in the Act which determine who is a political committee and therefore who must report under 2 U.S.C. § 434. Whether a group is a "political committee" (*id.* § 431(d)) depends upon whether its outlays amount to "contributions" or "expenditures," which in turn depends on whether the outlays are found to have been "made for the purpose of . . . influencing the nomination for election, or election" of candidates for federal office. *Id.* §§ 431(e), (f). The latter phrase, without more, would be open to constitutional attack on the grounds of vagueness, since it potentially reaches, for example, the activities of nonpartisan issue groups which in a sense seek to "influence" an election, but only by influencing the public to demand of candidates that they take certain stands on the issues. *See* our discussion of similar language in 2 U.S.C. § 437a, slip opinion pages 1554–1557 *infra*. However, the language in section 431 has been authoritatively construed and limited in reach by the Second Circuit in United States v. National Committee for Impeachment, 469 F.2d 1135, 1141 (2d Cir. 1972); the Second Circuit's interpretation was followed in ACLU v. Jennings, 366 F.Supp. 1041, 1056–57 (D.D.C.1973) (three-judge court), *vacated as moot sub nom.* Staats v. ACLU, 43 U.S.L.W. 3673 (U.S. June 23, 1975). Both decisions held that a group will be considered a political committee only if it makes its expenditures under the control or with the consent of a candidate, or if the major purpose of its expenditures is the nomination or election of candidates. Nonpartisan issue groups are therefore not covered.

We accept the construction of the section 431 definitions offered in *National Committee for Impeachment* and *Jennings, supra*, and we consider the reach of the major disclosure provisions, as thus construed, constitutional. We note, moreover, that Congress too apparently accepts the courts' construction; the FECA Amendments of 1974 do make some changes in 2 U.S.C. §§ 431(d), (e), and (f), but they leave unchanged the key language ("made for the purpose of influencing") which was narrowly construed in the two cases.

it seems plain that the statute as a whole is calculated to discourage the making and use of contributions for purposes of corruption.

Burroughs was cited with approval twenty years later in *United States v. Harriss*, 347 U.S. 612, 625 (1954), where the Court, speaking through Chief Justice Warren, upheld against a First Amendment challenge an act requiring disclosure of contributions for lobbying:

> [Congress] acted in the same spirit and for a similar purpose in passing the Federal Corrupt Practices Act—to maintain the integrity of a basic governmental process. See *Burroughs & Cannon v. United States*, 290 U.S. 534, 545.

Now another twenty years has passed and we are asked to say that those decisions are subject to intervening rulings on the First Amendment freedom of political expression. We shall discuss this issue presently. It suffices at this juncture to say that, as a division of this court recently held, the *Burroughs* and *Harriss* decisions establish the facial validity of FECA's requirement for reporting disclosure of contributions, in the absence of a factual record undercutting their standing. *United States v. Finance Committee to Reelect the President*, 507 F.2d 1194 (D.C.Cir.1974). We are broadly in accord with the reasoning in *Stoner v. Fortson*, 379 F.Supp. 704 (N.D.Ga. 1974), where a three-judge district court found that the governmental interest in preserving the democratic process justified a state statute requiring disclosure of contributions of $101 or more.

With that general background, we turn to particular aspects of FECA, and begin with the record keeping and auditing provisions that permit the Federal Election Commission to inspect the lists kept by political committees of individuals who contribute more than $10. These audit provisions neither explicitly nor implicitly authorize disclosure by the Commission of contribution records. Consequently, the confidential status of those records precludes any claim of real or threatened injury to plaintiffs' First Amendment interests arising from public disclosure. We discern no basis in the statute for authorizing disclosure outside the Commission in the absence of probable cause to suspect a violation, and hence no substantial "inhibitory effect" operating upon plaintiffs at this time. Whether upon discovery of an apparent violation disclosure may be made as an incident of audit is a question that does not have sufficient "ripeness" at this time. The point of audit is soon enough to raise specific issues about the constitutionality of the audit provisions.

As to the provisions for disclosure of contributions over $100, plaintiffs suggest that they do not disagree that the concept of disclosure is constitutional, but argue that the threshold values in FECA are too low, and therefore not minimally intrusive. We disagree. Since the individual contribution limit is set at $1000, disclosure limited to amounts in excess thereof would be tantamount to requiring those committing a crime to file reports of their offense. A disclosure law serves the function of informing the electorate,[113] and must also function as an effective enforcement tool and loophole-closing device. Unless the disclosure threshold is set substantially below the contribution limit, patterns of giving (such as by all or most of the members of an interest group) will pass unnoticed. The legislature must have reasonable latitude as to where to draw the line.

In this case, the legislature dispensed with routine reporting of contributions of $100 or less—an exemption that reaches a large percentage of contributions, permits substantial participation by those concerned with political privacy, and provides elbow room for parties to raise substantial funds from modest contributions. In view of these considerations, we have no basis for holding that this approach by the legislature to the complex problems involved in drawing the line exceeded the bounds of reasonable latitude.

2. Minor Parties

The argument is made that whatever the validity of the reasons for disclosure with respect to major parties they have no application to minor parties, new parties and independents, and that new parties and independents in particular should be allowed to carry on their financial affairs secretly to protect their contributors from presumed oppression and retaliation from the party who wins the election and from the public generally; otherwise, their contributors will be discouraged from contributing.[114]

113. Advanced in the intervening defendants' brief is the thesis that disclosure promotes First Amendment values by assisting voters to make an informed choice among candidates because the voters know which individuals, groups, and causes are funding which candidates. Brief at 72–73. The District Court found that by improving the flow of information to the voter, disclosure laws facilitate the intelligent exercise of the franchise. Findings I, ¶ 134.

114. The short answer to this argument is set out in *Stoner v. Fortson, supra*. In upholding a disclosure statute remarkably similar to section 434 (disclosure began with $101 contributions rather than those in excess of $100), the court rejected the precise attack made here. Stoner, a candidate for Lieutenant Governor of Georgia, in the Democratic primary (tantamount to election in Georgia, *see United States v. Classic, supra*, 313 U.S. at 313–14 & n.2), alleged "that because he is a very controversial candidate, the Act's requirement of listing the name, amount, and address of contributors contributing $101 or more to his campaign would subject such contributors to harassment and persecution, thus depriving them of their first amendment right of free speech and association." 379 F.Supp. at 710–11. Following the usual two-step procedure, the court held first that the disclosure statute served a compelling state interest and second that there was a substantial nexus between this interest and the enforcement of the statute. *Id.* at 712–714. Therefore, the court held, incidental infringement of first amendment rights of speech and association was constitutionally permissible. *Id.* at 714.

For reasons similar to those stated by the *Stoner* court, that same substantial nexus exists here between the government's compelling interest in clean elections, on the one hand, and disclosure by all candidates, including independents and candidates of minor and new parties, on the other. This record shows that non-major party candidates are often supported by "angels" who make large contributions. *See* Findings III, Buckley ¶ 41 (at least 180 individuals gave $1000 or more to Senator Buckley's 1970 campaign on the Conservative Party ticket). There is no reason to believe that those angels are incapable of violating the contribution limitations or otherwise giving in devious ways. *Compare* Findings I, ¶¶ 112–117 (detailing 47 recent convictions for election law violations). Disclosure would tend to prevent or expose such violations of the statute by minor party contributors every bit as much as it deters or reveals violations by major party donors. Moreover, the voting population has an interest in knowing the composition of the angels' wings and what makes them fly. Opponents have an interest in enlightening the electorate on the subject. And Congress has a right, if not an obligation, to provide a means of informing the voting population so voters are not required to vote blind. On these two grounds, disclosure with respect to non-major parties serves exactly the same purposes as it does with respect to major parties. There can be no dispute that disclosure by minor parties has a substantial nexus to the compelling governmental interests in enforcing the election laws and informing the voters.

We begin by noting that the record in this case presents only scant evidence tending to show a "chilling effect" resulting from the major disclosure requirements, and only a skimpy indication of harassment of those whose contributions were disclosed [115] in the 1972 and 1974 elections where almost identical provisions applied.[116] This showing is not sufficient to override the application of principles that are facially constitutional and supported by compelling governmental interests—informing the electorate and preventing the corruption

There is, to be sure, a third interest to be served by disclosure laws: deterring corruption in the sense of favors dispensed by those in power to their large contributors. *Cf.* Stoner v. Fortson, *supra*, 379 F.Supp. at 713. And it is true that the connection is less substantial between this interest and disclosure by non-major parties, for it is indeed less likely that minor parties will win and find themselves in a position to dispense governmental favors. It is, however, not impossible—and no election law should ever be premised on the notion that non-major parties *cannot* win an election. Those who argue that disclosure laws serve no compelling interest when applied to minor parties and independents focus too narrowly. They see only this third reason for disclosure laws and ignore the two compelling interests described earlier: disclosure laws serve as an enforcement tool and an informing agent. These interests apply with full force to minor parties, and they are sufficient to overcome any incidental infringement on first amendment rights worked by the disclosure provisions.

115. There was testimony by Laura Wertheimer that two persons solicited in 1974 for a contribution to the Libertarian Party in New York refused to contribute because they were unwilling to have their names disclosed, and the District Court so found. Findings III, Wertheimer ¶ 6. The District Court further found, however, that Ms. Wertheimer could present no evidence of harassment or reprisal inflicted on persons whose names were reported as contributors to the Libertarian Party during the 1974 campaign. *Id.* at ¶ 11.

The record evidence on harassment is particularly thin. For example, Daniel Joy, Treasurer of the American Conservative Union (ACU), testified that persons were harassed because they were in receipt of funds from ACU. Findings III, Joy ¶ 9. No details were given as to the extent, nature, scope, or duration of the harassment. Certainly, Joy's testimony standing alone is not sufficient to warrant a decision by this court declining to apply an otherwise constitutional disclosure requirement to ACU or other minor parties.

Similarly, J. Daniel Mahoney, State Chairman of the Conservative Party of the State of New York, testified that in 1962 individuals in various departments of the state government "talk[ed] to people in regulated businesses" who had signed a petition to establish the party as a legal entity. Findings III, Mahoney ¶ 8. It does not appear that these particular incidents mark a substantial program of harassment, and apparently the incidents ceased after publication of two critical newspaper editorials. *Id.* Moreover, as with the testimony of Daniel Joy, there is no evidence as to the type of reprisals planned or practiced. And finally, Mahoney testified that he knew of no incident in which individuals whose names were disclosed to the federal government under the FECA of 1971 have been subject to harassment or reprisals as a result of the disclosure. *Id.* ¶ 9.

We are not called on to decide whether unpopular minor parties would have to produce evidence of "economic reprisal, loss of employment, threats of physical coercion, and other manifestations of public hostility" (such as were demonstrated in NAACP v. Alabama *ex rel.* Patterson, 357 U.S. 449, 462 (1958)) in order to be relieved of the duty to disclose. We do not hesitate to hold that the evidence in this record falls far short of that required to warrant a judicially imposed exemption from the FECA disclosure requirements.

116. Findings III, Mahoney ¶ 9; Findings IIB, ¶ 1; *see* Findings IIA, ¶¶ 3–4, 5–7. The District Court also found that a Washington State disclosure law produced no reduction in the total amount of funds collected by major candidates there. Finding I, ¶ 195. For an analysis of a parallel Florida statute, see Roady, *Ten Years of Florida's "Who Gave It—Who Got It" Law*, 27 *Law & Contemp. Prob.* 434, 440 (1962) (concluding that the statute did not reduce contributions).

of the political process. Although disclosure of contributions has an impact on personal privacy in political association, this is outweighed by the compelling state interest in disclosure to the public.[117] Indeed, it would be ironic if First Amendment rights were extended so as to prevent the kind of public awareness that is the overarching objective of the First Amendment.

Disclosure laws are predicated on the proposition that money effectively used can influence voters and that the voters sought to be influenced ought to know where the money is coming from, and be able to take into account the social, economic, and political interests of the contributors. It is pertinent to the political process, as elsewhere in the marketplace of ideas, that meaningful competition depends on openness.

The FECA disclosure provisions are reasonably calculated to prevent the election secrecy so essential to the appearance and reality of influence dealing. They require disclosure of contributions that are substantial in amount, albeit below the $1000 maximum, in order to prevent the disguising of a pattern of substantial giving by "splitting" contributions among members of a group. They apply to parties and candidates across the board, be they majority and established or minority and newly formed. Equal treatment of differently circumstanced parties is not always appropriate, but here we approve in the broad Congress's consistent and long-standing approach of providing uniform treatment. Minority and independent candidacies have a real impact on the election process that cannot be measured by tallied votes alone. They can affect election outcomes by diverting votes from better supported candidates as well as by occasionally winning the contested office.[118] They can be deliberately formed to take a stalking horse role, or their position can be used to that end by others. Any broad exemption from disclosure could subvert the interlocking regulatory provisions of FECA by increasing the incentives to exploit the consequent lax area of regulation, while underlining public suspicions that any opportunity for evading the regulatory scheme will be utilized.

We recognize that disclosure may prompt some potential donors to reduce their contributions to minority parties.[119] This may, indeed, also apply to contributions to major parties, although this is

117. In this country a person's right to vote secretly is inviolate. A person also has a right of personal privacy in political association, including a right to contribute to the candidate of his choice. But the right to contribute secretly is certainly of a lesser order of priority than the secret ballot. To the extent that a person goes past voting to contributing, his right of privacy in political association weighs less when balanced against other societal values.

118. *See, e. g.*, Findings III, Buckley ¶ 4 (plaintiff Buckley was elected to the United States Senate in 1970 as the candidate of the Conservative Party of the State of New York).

119. The disclosure statute does not, however, make it impossible for minor parties to get underway, even if nearly all their contributors insist on remaining confidential. Gifts of $100 or less are not disclosed, and $100 is not an insubstantial sum. Since minor party contributions are generally smaller than those made to major parties, *see* Findings IIA, ¶¶ 56, 73, minor party contributions are less affected by the disclosure requirements. Moreover, even those who have already contributed $100 can still find ways to advance the cause without breaking confidentiality. They can make independent expenditures of $100 or less without being subject to disclosure, 2 U.S.C. § 434(e), and the Act puts no restriction on services volunteered by individuals. *See id.* § 431(e)(5)(A).

not a matter addressed by the record. So far as unpopular minor parties are concerned, disclosure does indeed infringe their First Amendment freedom to associate to advocate unorthodoxy. *Sweezy v. New Hampshire*, 384 U.S. 234 (1957). But the right of political association is subject to reasonable restriction for reasons of compelling state interest, and the opinion of Chief Justice Warren in *Sweezy* must be read alongside his statement in *Harriss* indicating approval of disclosure requirements in federal corrupt practices legislation. So, too, with Justice Frankfurter's concurrence in *Harriss*.[120]

The public stake in the election process is a basic premise of our democratic society, and those seeking to influence it directly are proper objects of public concern. We do not perceive a tenable rationale for assuming that the public interest in minority party disclosure of contributions above a reasonable cut-off point is uniformly outweighed by potential contributors' associational rights. New parties and candidates are not always what they pretend to be. Disclosure requirements may have a prophylactic effect in deterring or exposing stalking horses or "dirty tricks." The present law reflects an effort to tighten pertinent provisions and enhance their effectiveness.

It may well be that a party (or candidate) can demonstrate such harassment to itself or to its supporters as to underpin a ruling that disclosure in particular circumstances cannot constitutionally be required. *Compare NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958). Whether the Commission through its regulations or its advisory opinions can appropriately address this situation is a question we do not decide in the absence of concrete facts. In any event, courts sit to act in such cases when presented with a proper record.

3. Other Issues

Question 7(c)[121] addresses the provisions in 2 U.S.C. § 434(d)[122] exempting from reporting requirements the value of certain services rendered by congressional recording studios, by an individual in the pay of either chamber, or by the parties' congressional committees. It specifically does not apply to services furnished during the calendar year in which the member could run for reelection. Such services rendered in other years obviously have some political worth, but the line drawn by the legislature was intended to separate activities designed to win elections from activities designed to make a Congressman known and available to his constituents. It is certainly appropriate for Congress to assure that steps taken to diminish incumbency advantage do not have the result of eroding representation or the effectiveness of a legislator in communicating with his constituents.

Question 7(d)[123] bids us consider section 434(e)[124], which requires every person (other than a political committee or candidate) who makes contributions or expenditures in excess of $100 per calendar year, other than by contribution to a political committee or candidate, to file a report with the Commission disclosing those contributions or expenditures. This presumably would include volunteers whose incidental expenses exceed $600 (a $500 exemption under § 431(e) and a $100 exemption under this provision). Such disclosure assists in the enforcement of limitations set out in 18 U.S.C. § 608(e) (dealing with expenditures relative to a clearly identified candidate), and parallels the threshold for disclosure of direct contributions to political committees or candidates. Further, it takes away from independent expenditures any cloak of secrecy which would otherwise make them favored over direct contributions. Our scrutiny leads us to find no objection to this provision. If, as we hold, Congress has both the authority and a compelling interest to regulate independent expenditures under section 608(e), surely it can require that there be disclosure to prevent misuse of the spending channel.

B. *Reports by Certain Persons: Section 437a*

We therefore uphold the major disclosure provisions of the Act. Those thus far examined are carefully tailored to minimize intrusion upon interests sheltered by the First Amendment. They exact disclosure only when plainly and closely related to a substantial governmental interest long recognized by the courts: protection of the integrity of federal elections. *Compare Burroughs and Cannon v. United States*, 290 U.S. 534, 545 (1934); *Stoner v. Fortson*, 379 F.Supp. 704, 712 (N.D.Ga.1974).

The same cannot be said for section 308 of the Act, codified as 2 U.S.C. § 437a, which is the subject of Question 7(e).[125] That section, by its terms, covers

120. In Pollard v. Roberts, 283 F.Supp. 248 (E.D.Ark.), *aff'd*, 393 U.S. 14 (1968) (mem.), a three-judge district court, which included then Circuit Judge Blackmun, saw no compelling state interest to justify a particularized inquiry by a prosecutor into the identity of contributors to the Republican Party in Arkansas, referred to as a long-time minority party, "a minority party as far as numbers of regular adherents are concerned." *Id.* at 258. The court expressly distinguished general corrupt practices legislation, and indeed referred to such statutes as having "much merit." *Id.* at 258-59.

121. 7(c) Does 2 U.S.C. § 434(d) violate such rights, in that it neither requires disclosure of nor treats as contribution to or expenditure by incumbent officeholders the resources enumerated in 2 U.S.C. § 434(d)?

122. 2 U.S.C. § 434(d) provides:

> (d) *Members of Congress, reporting exemption.* This section does not require a Member of the Congress to report, as contributions received or as expenditures made, the value of photographic, matting, or recording services furnished to him by the Senate Recording Studio, the House Recording Studio, or by an individual whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives and who furnishes such services as his primary duty as an employee of the Senate or House of Representatives, or if such services were paid for by the Republican or Democratic Senatorial Campaign Committee, the Democratic National Congressional Committee, or the National Republican Congressional Committee. This subsection does not apply to such recording services furnished during the calendar year before the year in which the Member's term expires.

123. 7(d) Does 2 U.S.C. § 434(e) violate such rights, in that it provides that every person contributing or expending more than $100 other than by contribution to a political committee or candidate (including volunteers with incidental expenses in excess of $600) must make disclosure to the Federal Election Commission?

124. 2 U.S.C. § 434(e) provides:

> (e) *Contributions or expenditures by person other than political committee or candidate.* Every person (other than a political committee or candidate) who makes contributions or expenditures, other than by contribution to a political committee or candidate, in an aggregate amount in excess of $100 within a calendar year shall file with the Commission a statement containing the information required by this section. Statements required by this subsection shall be filed on the dates on which reports by political committees are filed but need not be cumulative.

125. Question 7(e) reads:

> Does 2 U.S.C. § 437a violate such rights, in that it requires any person who expends

a much broader range of groups and activities than do the core disclosure requirements. It provides in part:

> Any person (other than an individual) who expends any funds or commits any act directed to the public for the purpose of influencing the outcome of an election, or who publishes or broadcasts to the public any material referring to a candidate (by name, description, or other reference) advocating the election or defeat of such candidate, setting forth the candidate's position on any public issue, his voting record, or other official acts (in the case of a candidate who holds or has held Federal office), or otherwise designed to influence individuals to cast their votes for or against such candidate or to withhold their votes from such candidate shall file reports with the Commission as if such person were a political committee. The reports filed by such person shall set forth the source of the funds used in carrying out any activity described in the preceding sentence in the same detail as if the funds were contributions within the meaning of section 431(e) of this title, and payments of such funds in the same detail as if they were expenditures within the meaning of section 431(f) of this title.[126]

Analysis Of The Section

Dissecting the statutory language, it is seen that section 437a's demand for disclosure is activated—without any "expend[ing] [of] any funds" whatever[127]—(1) by "any act directed to the public for the purpose of influencing the outcome of an election"; or (2) by "any material" "publishe[d] or broadcast[ ] to the public" which "refer[s] to a candidate (by name, description, or other reference)" and which (a) "advocat[es] the election or defeat of such candidate," or (b) "set[s] forth the candidate's position on any public issue, his voting record, or other official acts (in the case of a candidate who holds or has held Federal office)," or (c) is "otherwise designed to influence individuals to cast their votes for or against such candidate or to withhold their votes from such candidate." Notwithstanding the exemption of some activities, subsequently considered,[128] the scope of section 437a is potentially expansive.

Clearly a group engaging in "any act directed to the public for the purpose of influencing the outcome of an election" must file the statutory report. So also, with equal clarity, must a group publishing or broadcasting to the public "any material" in reference to a candidate which "advocate[s] the election or defeat of such candidate" or which is "otherwise designed to influence individuals to cast their votes for or against such candidate or to withhold their votes from such candidate." In each of these instances, the activity summoning the report is calculated to exert an influence upon an election. But section 437a is susceptible to a reading necessitating reporting by groups whose only connection with the elective process arises from completely nonpartisan public discussion of issues of public importance. For while the reporting requirement plainly obtains when a group publishes or broadcasts to the public material "set[ting] forth a candidate's position on any public issue, his voting record, or other official acts" with a "design[ ] to influence" voting at an election, it is not at all certain that the requirement is inoperative where those activities are unaccompanied by any such design.[129]

Thus section 437a calls for disclosure, for example, by plaintiff Human Events, Inc., the publisher of a weekly newspaper devoted primarily to events of political importance and interest, and to discussion of public issues, public officials, political leaders and candidates. Findings III, Winter ¶ 2. In its offerings to the public, Human Events endorses, explicitly or implicitly, candidates for federal office, *id.* ¶¶ 5, 8, an activity "advocating the election . . . of [a] candidate." But even if Human Events discontinued that kind of advocacy, it still might be subject to section 437a because it also takes positions on issues and attempts to influence public opinion. The latter may be deemed activities which are "directed to the public for the purpose of influencing the outcome of an election," and which are "designed to influence individuals to cast their votes for . . . candidate[s]."

As another example, section 437a may also demand disclosure by plaintiff New York Civil Liberties Union. The District Court found that this organization is forbidden by the constitution and policies of its parent body from endorsing or opposing any candidate for public office, but that it does engage publicly in nonpartisan activities which "frequently and necessarily refer to, praise, criticize, set forth, describe or rate the conduct or actions of clearly identified public officials who may also happen to be candidates for federal office." Findings III, Glasser ¶¶ 3–4. The organization also publicizes in newsletters and other publications the civil liberties voting records, positions and actions of elected public officials, some of whom are candidates for federal office. *Id.* ¶¶ 5, 8. Since the published material regularly gives "candidate[s'] position[s] on . . . public issue[s], [their] voting record[s], or other official acts," the organization may be subject to section 437a.[130]

In no lesser degree, section 437a may affect group activity extending from one end of the spectrum of public issue-discussion to the other. If the section is given the widest scope its language could bear, the result would be an enormous interception of groups and activities not unlike that which the Second Circuit found likely in the wake of another provision of the 1971 Act. "[E]very position on any issue, major or minor, taken by [any candidate] would

funds or commits any act for the purpose of influencing the outcome of an election or who publishes or broadcasts to the public any material advocating the election or defeat of a candidate, setting forth a candidate's position on any public issue, his voting record, or any official acts to file reports with the Commission as if such person were a political committee?

126. The remainder of § 437a is set forth in note 132 *infra*.

127. As § 437a provides, any organization "expend[ing] any funds . . . for the purpose of influencing the outcome of an election" must make the disclosure specified.

128. See text at note 132 *infra*.

129. We point out, in later treatment of this aspect of § 437a, that coverage of nonpartisan public discussion of candidates' stands, voting records and other official acts depends upon whether the clause commencing with the words "or otherwise designed to influence" qualifies the "setting forth" of "the candidate's position on any public issue, his voting record, or other official acts." See text at notes 135–37, *infra*.

130. Plaintiff New York Civil Liberties Union has sufficiently demonstrated a "threat of specific future harm," *Laird v. Tatum*, 408 U.S. 1, 14 (1972), from the operation of § 437a to invoke judicial review of that section. *See* Findings III, Glasser ¶ 15 (indicating that disclosure would cause loss of contributions from those who currently insist that their gifts remain confidential).

be a campaign issue and any comment upon it in, say, [an unexempted] newspaper editorial or an advertisement would be subject to proscription unless the registration and disclosure regulations of the Act . . . were complied with." *United States v. National Committee for Impeachment*, 469 F.2d 1135, 1142 (2d Cir. 1972).[131] We might add to the list of publications potentially affected by such comment trade and professional journals, campus newspapers, union newsletters and even church bulletins, among a host of others. Indeed, "every little Audubon Society chapter [might] be [intercepted], for 'environment' is an issue in one campaign or another. On this basis, too, a Boy Scout troup advertising for membership to combat 'juvenile delinquency' or a Golden Age Club promoting 'senior citizens' rights' [might] fall under the Act." *Id.*

To be sure, section 437a specifies exemptions for "any publication or broadcast of the United States Government," and for "any news story, commentary, or editorial distributed through the facilities of a broadcasting station or a bona fide newspaper, magazine, or other periodical publication."[132] The latter exception, however, cannot be construed so broadly as to materially curtail the section's application to activities of issue groups. For, after stating that exemption, section 437a expressly qualifies and narrows the definition of "bona fide . . . periodical publications" in such fashion as to leave but a scant reduction in the group activities affected. It first provides that, for the purposes of the section, a publication is not "bona fide" if it "is primarily for distribution to individuals affiliated by membership or stock ownership with the [group] distributing it or causing it to be distributed, and not primarily for purchase by the public at newsstands or by paid subscription." 2 U.S.C. § 437a(1). Thus, for example, the newsletter which is commonplace among issue groups like the New York Civil Liberties Union continues to bind the organization to the disclosure requirements of the Act, as it does with respect to countless other groups. Section 437a further provides that the exemption shall not apply if "the news story, commentary, or editorial is distributed by a [group which] devotes a substantial part of [its] activities to attempting to influence the outcome of elections, or to influence public opinion with respect to matters of national or State policy or concern." *Id.* § 437a(2). So, as another example, Human Events remains within the ambit of section 437a as long as its newspaper retains its present format. Similarly, section 437a still requires disclosure by any issue group placing an advertisement mentioning candidate positions with nearly any newspaper or magazine, to say nothing of pamphleteering in any of its innumerable forms. And, seemingly, section 437a also imposes its disclosure demands on the newspapers and magazines with respect to publication of their own materials.[133]

131. The court was addressing the Government's contention that the definition of "political committee" in § 301(d) of the 1971 Act (codified at 2 U.S.C. § 431(d) and left substantially unchanged by the 1974 Amendments) should be given a very broad reading. The court instead held that it should be given a narrow construction, thereby avoiding constitutional difficulties. See text at note 134, *infra*.

132. In its entirety the exemption provision reads:

> The provisions of this section do not apply to any publication or broadcast of the United States Government or to any news story, commentary, or editorial distributed through the facilities of a broadcasting station or a bona fide newspaper, magazine, or other periodical publication. A news story, commentary, or editorial is not considered to be distributed through a bona fide newspaper, magazine, or other periodical publication if—
>
> (1) such publication is primarily for distribution to individuals affiliated by membership or stock ownership with the person (other than an individual) distributing it or causing it to be distributed, and not primarily for purchase by the public at newsstands or by paid subscription; or
>
> (2) the news story, commentary, or editorial is distributed by a person (other than an individual) who devotes a substantial part of his activities to attempting to influence the outcome of elections, or to influence public opinion with respect to matters of national or State policy or concern.

2 U.S.C. § 437a.

Constitutional Doctrine

It is well established that compelled disclosure of the kind of information section 437a exacts can work a substantial infringement of the associational rights of those whose organizations take public stands on public issues. *E. g., NAACP v. Alabama* ex rel. *Patterson*, 357 U.S. 449, 462 (1958); *Bates v. Little Rock*, 361 U.S. 516, 522–524 (1960). To say this is not to denigrate our action upholding the Act's disclosure requirements applicable to "political committees" and to "contributions" and "expenditures" as those terms are defined therein. We have sustained those provisions although compliance with them may impose a burden that is more than trivial, and may portend a deterrence that arouses some concern. Our holdings supporting the Act's central disclosure requirements are grounded on our recognition that the government has demonstrated a substantial and legitimate interest in protecting the integrity of its elections, an interest closely connected to and plainly advanced by those provisions.

Section 437a, however, seeks to impose the same demands where the nexus may be far more tenuous. As we have said, it may undertake to compel disclosure by groups that do no more than discuss issues of public interest on a wholly nonpartisan basis. To be sure, any discussion of important public questions can possibly exert some influence on the outcome of an election preceding which they were campaign issues. But unlike contributions and expenditures made solely with a view to influencing the nomination or election of a candidate, *see* 2 U.S.C. §§ 431(e), 431(f), issue discussions unwedded to the cause of a particular candidate hardly threaten the purity of elections. Moreover, and very importantly, such discussions are vital and indispensable to a free society and an informed electorate. Thus the interest of a group engaging in nonpartisan discussion ascends to a high plane, while the governmental interest in disclosure correspondingly diminishes.

The Supreme Court has indicated quite plainly that groups seeking only to advance discussion of public issues or to influence public opinion cannot be equated to groups whose relation to political processes is direct and intimate. In *United States v. Rumely*, 345 U.S. 41

133. While § 437a purports not to apply "to any news story, commentary, or editorial distributed through the facilities of . . . a bona fide newspaper, magazine or other periodical publication," the published material "is not considered to be distributed through a bona fide newspaper, magazine, or other periodical publication if" the publisher "devotes a substantial part of [its] activities to attempting to influence the outcome of elections, or to influence public opinion with respect to matters of national or State policy or concern." How many of the Nation's great newspapers and magazines do not regularly endeavor—and rightfully so—to exert influences precisely of those types?

(1953), the Court upheld a resolution authorizing a House committee to inquire into lobbying activities after construing it narrowly to apply only to representations made directly to Congress, and not to indirect efforts to influence legislation by changing the climate of public opinion. On that basis it affirmed the reversal of a conviction for failure to furnish the committee with financial records of an organization. In the course of its opinion, the Court stated:

> Surely it cannot be denied that giving the scope to the resolution for which the Government contends, that is, deriving from it the power to inquire into all efforts of private individuals to influence public opinion through books and periodicals, however remote the radiations of influence which they may exert upon the ultimate legislative process, raises doubts of constitutionality in view of the prohibition of the First Amendment.

Id. at 46. *Cf. United States v. Harriss*, 347 U.S. 612 (1954).

More recently, in *Mills v. Alabama*, 384 U.S. 214 (1966), the Court struck down a state statute prohibiting publication of any newspaper editorial on election day despite its obvious propensity under ordinary conditions to sway the outcome of the election. Said the Court:

> Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that amendment was to protect the free discussion of governmental affairs. This of course includes discussions of candidates, structures and forms of government, the manner in which government is operated or should be operated, and all such matters relating to political processes.

Id. at 218–219.

Two additional decisions addressing a disclosure feature of the Federal Election Campaign Act of 1971 point up the grave constitutional difficulties section 437a engenders. In *United States v. National Committee for Impeachment, supra*, the government argued that the defendant organization was a political committee, within the meaning of section 301(d) of the 1971 Act, (codified at 2 U.S.C. § 431(d), and left substantially unchanged by the FECAA of 1974) on the basis of an advertisement placed in *The New York Times* criticizing President Nixon's actions in Vietnam, calling for his impeachment, and reciting an "Honor Roll" of members of Congress who had supported an impeachment resolution. Section 431(d) defines "political committee" as including organizations accepting "contributions" or making "expenditures" exceeding $1,000 annually, and sections 431(e) and (f) define "contributions" and "expenditures" as distributions "made for the purpose of influencing" federal nominations and elections.[134] The government sought to enjoin acceptance of contributions and disbursements of monies by the organization until it filed the report described in the Act. Recognizing that such a broad reading of the definition of "political committee" would raise serious constitutional problems, the court construed the term as applicable only where the group acted with consent or authorization of a candidate or where the major purpose of the group was the nomination or election of candidates. 469 F.2d at 1139–1142.

134. We note the similarity of "the purpose of influencing" in § 431(d), on the one hand, and "the purpose of influencing," the "advocating" and the "design[ ] to influence" in § 437a, on the other.

Likewise, in *ACLU v. Jennings*, 366 F.Supp. 1041 (D.D.C.1973), *vacated as moot sub nom. Staats v. ACLU*, 43 U.S. L.W. 3673 (June 23, 1975), a three-judge district court in this circuit was faced with a similar challenge. It perceived the same constitutional obstacles and adopted the same narrow interpretation of section 431(d) propounded in *National Committee for Impeachment*, 366 F.Supp. at 1054–1057.

In the latter two cases, the courts were able to avoid a decision on constitutionality of the statutory provision involved by construing it narrowly enough to eliminate doubt on that score. And here it is our duty to follow the same path if section 437a may fairly be limited in that fashion. *E. g., United States v. Rumely, supra*, 345 U.S. at 45; *United States v. CIO*, 335 U.S. 106, 120–121 (1948). Accordingly, we have given special attention to language in the section which at first glance appears to allow for a limiting construction.

Section 437a initially demands disclosure when a group acts publicly "for the purpose of influencing the outcome of an election."[135] It then seems to call for disclosure by any group which publishes or broadcasts, *inter alia*, "a candidate's position on any public issue, his voting record, or other official acts"[136]—without more a very sweeping provision. But the clause immediately following speaks of material "otherwise designed to influence individuals to cast their votes for or against such candidate or to withhold their votes from such candidate."[137] Although the extent of this qualification is not entirely clear from the structure of the sentence, it is possible to read it as applicable to the previous clause as well—that is, that disclosure is required only of groups publicizing information of the quoted types with a "design[ ] to influence" individuals in casting their votes. For present purposes we adopt that reading as the narrowest interpretation feasible. The pivotal element, then, is the "purpose" or "design[ ]" "to influence," and we believe that such a "purpose" and such a "design[ ]" are functionally identical. The question thus is whether the requirement of "purpose" or "design[ ]" "to influence" is sufficiently certain in meaning to save section 437a from constitutional condemnation.

Validity of The Section

The principles charting our course are well settled. "Vague laws in any area suffer a constitutional infirmity," *Ashton v. Kentucky*, 384 U.S. 195, 200 (1966) (footnote omitted), and commonly in the First Amendment area doubly so. There, perhaps more than elsewhere, statutory vagueness and statutory overbreadth are constitutional vices often related and sometimes functionally inseparable. *See, e. g., NAACP v. Button*, 371 U.S. 415, 423–433 (1963). For "where a vague statute 'abut[s] upon sensitive areas of basic First Amendment freedoms' it 'operates to inhibit the exercise of [those] freedoms,'" *Grayned v. City of Rockford*, 408 U.S. 105, 109 (1972), quoting in turn *Baggett v. Bullitt*, 377 U.S. 360, 372 (1964) and *Cramp v. Board of Public Instruction*, 368 U.S. 278, 287 (1961); and "[u]ncertain meanings inevitably lead citizens to 'steer far wider of the unlawful zone' . . . than if the boundaries of the forbidden area were clearly marked." *Grayned v. City of Rockford, supra*, 408 U.S. at 109, quoting

135. See text at notes 127–28, *supra*.

136. See text at notes 127–28, *supra*.

137. See text at notes 127–28, *supra*.

Baggett v. Bullitt, supra, 377 U.S. at 372, in turn quoting *Speiser v. Randall,* 357 U.S. 513, 526 (1958) (footnote omitted). *See also Gooding v. Wilson,* 405 U.S. 518, 521 (1972); *Keyishian v. Board of Regents,* 385 U.S. 589, 604 (1967); *Speiser v. Randall, supra,* 357 U.S. at 526; *NAACP v. Button, supra,* 371 U.S. at 433. "The danger of that chilling effect upon the exercise of vital First Amendment rights must be guarded against by sensitive tools which clearly inform [citizens of] what is being proscribed." *Keyishian v. Board of Regents, supra,* 385 U.S. at 604.

Consequently, "standards of permissible statutory vagueness are strict in the area of free expression." *NAACP v. Button, supra,* 371 U.S. at 432. "Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity," *id.* at 433; "[p]recision of regulation must be the touchstone in [that] area. . . ." *Id.* at 438. *See also Keyishian v. Board of Regents, supra,* 385 U.S. at 603–604. "[T]he statute must be carefully drawn or be authoritatively construed to [proscribe] only unprotected speech and not be susceptible of application to protected expression." *Gooding v. Wilson, supra,* 357 U.S. at 525; *Cantwell v. Connecticut,* 310 U.S. 296, 304 (1940). "When First Amendment rights are involved," a court must "look even more closely lest under the guise of regulating conduct that is reachable by the police power, freedom of speech or of the press suffer." *Ashton v. Kentucky, supra,* 384 U.S. at 200 (footnote omitted).

Section 437a, with a "purpose of influencing" and a "design[ ] to influence" as criteria undertaking to partially shape its operation, does not meet the governing standards. These criteria do not mark boundaries between affected and unaffected conduct "with narrow specificity"; they do not "clearly inform . . . [of] what is being proscribed." Rather, they leave the disclosure requirement open to application for protected exercises of speech, and to deterrence of expression deemed close to the line. Public discussion of public issues which also are campaign issues readily and often unavoidably draws in candidates and their positions, their voting records and other official conduct. Discussions of those issues, and as well more positive efforts to influence public opinion on them, tend naturally and inexorably to exert some influence on voting at elections. In this milieu, where do "purpose" and "design[ ]" "the influence" draw the line? Do they connote subjectively a state of mind, or objectively only a propensity to influence? Do they require, irrespective of state of mind, a capability of influencing, and if so how substantial a capability? What do they demand with respect to materials which "advocat[e] the election or defeat of [a] candidate," or which "set[ ] forth the candidate's position on [a] public issue" or "his voting record," beyond the inherent tendency of those materials to influence? What references to "other official acts" of the candidate, with what mental element, bring the section into play? To these questions, among a multitude of others, neither the text nor the legislative history of section 437a supplies any clear answer. And while we have continued our struggle for an interpretation of section 437a which might bypass its vagueness and overbreadth difficulties, we have been unable to do so.

The crucial terms, "purpose of influencing the outcome of an election" and "design[ ] to influence" individuals in voting at an election, are not defined in the

section. Ordinarily we would seek guidance, then, from the judicial interpretation of highly similar language in *National Committee for Impeachment* and *ACLU v. Jennings, supra.* Those cases, we reiterate, construed the words "made for the purpose of influencing [the nomination or election of federal candidates]" as applicable only to expenditures made under the control or with the consent of a candidate, and to contributions received and expenditutes made for the major purpose of nominating or electing such candidates. If we were to look only to section 437a itself, such an interpretation of its key language might indeed be possible, and it might avoid the constitutional difficulties which arise from the apparent reach of the section to purely issue-discussion groups.

But we cannot view section 437a in isolation, and therein lies the reason why those cases do not save the day here. Construction of section 437a in the fashion just advanced would reduce it to a pale repetition of the major disclosure provisions of the Act. With trivial exceptions,[138] any group thus required to report under section 437a would already be required to report under section 434(a); having made expenditures under the control of a candidate, or having received contributions or made expenditures for the major purpose of nominating or electing candidates, such a group would already be a political committee as defined in section 431. While we have some latitude in interpreting the words of a statute, we cannot construe them in such a fashion as to reduce them to elaborate redundancy. *See Jarecki v. G. D. Searle & Co.,* 367 U.S. 303, 307–308 (1961); *Wilderness Society v. Morton,* 156 U.S.App.D.C. 121, 135–136, 479 F.2d 842, 856–857 (*en banc*), *cert. denied,* 411 U.S. 917 (1973).

Moreover, a construction of section 437a which would merely reproduce almost identically the requirements of section 434 would be particularly inappropriate here, where Congress has made it abundantly clear that it intended section 437a to reach beyond the other disclosure provisions of the Act. For example, a group covered by section 437a is to report "as if it were a political committee," a directive making no sense if the section touches only the groups which are already political committees. The legislative history indicates even more emphatically the congressional intent to command disclosure for group activities not otherwise covered. The report of the Conference Committee, which formulated section 437a and inserted it into the Act, describes its breadth in no uncertain terms.[139] On the floor of the

138. An organization is not a political committee unless it "receives contributions or makes expenditures [as defined in the Act] during a calendar year in an aggregate amount exceeding $1,000." 2 U.S.C. § 431(d). Section 437a has no threshold amount. But it defies common sense to read an elaborate and lengthy provision like § 437a as merely a Congressional attempt to lower the threshold for reporting by groups which would be political committees if only they spent a little more. Moreover, even if a group falls short of the $1,000 threshold, it must still file reports under § 434(e) if its expenditures (other than those going to a candidate or political committee) exceed $100.

139. The conference report describes § 308, which became 2 U.S.C. § 437a, in this fashion:

> The conference substitute follows the provisions of the Senate bill generally. A provision of the House amendment extended the duty to register as a political committee to any person committing any act to influence the outcome of any election. This provision is recast as a new section 308 of the Act, which will require any organization which expends any funds or commits any act directed to the public for the purpose of influ-

House, following the action in conference, Representative Frenzel, a conferee, specifically named "Common Cause, the American Conservative Union, the American Civil Liberties Union and the environmental groups which sponsor the 'dirty dozen' list" as groups encompassed by section 437a, and declared that "[t]his provision is to apply indiscriminately and will bring under the disclosure provisions many groups, including liberal, labor, environmental, business and conservative organizations." 120 *Cong.Rec.* H10333 (daily ed., Oct. 10, 1974).[140] We are satisfied that by the addition in 1974 of section 437a to the Act, Congress intended to range far beyond the 1971 disclosure requirements.[141]

Thus the crucial terms—"purpose of influencing the outcome of an election" and "design[ ] to influence" voting at an election—stand without any readily available narrowing interpretation. Viewing this section against the backdrop of section 434(a), and keeping in mind the unmistakable congressional intention to broaden section 437a beyond section 434, we are unable to supply the precision essential to constitutionality by a limiting construction.[142] Were uncertainty about the breadth of section 437a without further consequence, we might consider waiting for interpretations from the Federal Election Commission in the hope that constitutional problems would be dissipated. *See Civil Service Commission v. National Association of Letter Carriers*, 413 U.S. 548, 575 (1973). But the problem is not merely one of awaiting application through enforcement proceedings, since the terms of the statute as such inhibit free and robust discussion of issues. Besides, as we have stated elsewhere, "if the words of the statute or its legislative history ma[k]e it indisputably clear that Congress intended a result which is unconstitutional, we would have to exercise our responsibility to invalidate the law." *United States v. Thompson*, 147 U.S.App.D.C. 1, 9, 452 F.2d 1333, 1341 (1971). We face up to that responsibility here; we hold section 437a unconstitutional and answer Question 7(e) in the affirmative.

The only question remaining is whether the invalidity of section 437a destroys the entire Act or just that section. We encounter no difficulty in concluding that only the section is affected. "Unless it is evident that the legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what is left is fully operative as law." *Champlain Refining Co. v. Corporation Commission*, 286 U.S. 210, 234 (1932). The basic disclosure pro-

encing the outcome of an election, or which publishes or broadcasts to the public material intended to influence public opinion with respect to candidates for Federal office to register with the Commission as a political committee and report the source and amount of its funds and of its expenditures. Since these organizations use their resources for political purposes, often having a direct and substantial effect on the outcome of Federal elections, it would be inappropriate to permit these organizations to conceal the interests they represent solely because the organizations are able to avoid reporting and disclosure under the technical definitions of political committee, contribution, and expenditure. The conference substitute does not apply to individuals acting on their own behalf or to news stories, commentaries, and editorials published in bona fide newspapers, magazines or other periodical publications. *H.R.Rep.No.*93-1438, 93d Cong., 2d Sess. 83 (1974).

140. During presentation of § 437a to the Senate for its action, Senator Cannon, who led the Senate conferees, had stated:

> [T]he thrust of this provision is to require organizations that communicate with the general public through advertisements, direct mailings, et cetera, in order to influence an election or to set forth a candidate's position on any public issue, his voting record, or other official acts, for the purpose of electing or defeating that candidate, to report as if that organization were a political committee.
>
> But this section does not reach an organization that limits itself to activities along the following lines: issuing communications directed to its members, making its position known to members of the press and to public officials, or participating in conferences and meetings and other discussions devoted to public issues. In other words, section 308 will cover organizations that use their funds to propagandize the general public but does not restrict internal communications or restrict the flow of news or the discussion of public issues.

120 Cong.Rec. S18526 (daily ed. Oct. 8, 1974).

It was in expressing disagreement with Senator Cannon's interpretation that Representative Frenzel voiced the observations in text. His full statement follows:

> The Senator's statement might exclude Common Cause, the American Conservative Union, the American Civil Liberties Union and the environmental groups which sponsor the "dirty dozen" list. No one would argue that it is the purpose of this provision to exempt these groups, nor is it intended to exempt any other particular group.
>
> This provision is intended to apply indiscriminately and will bring under the disclosure provisions many groups, including liberal, labor, environmental, business and conservative organizations. Section [437a] does not make any exceptions. While there are exemptions made to other provisions of the law—such as section 610 [18 U.S.C. § 610], no exemptions are made to this provision. The Commission and the courts should not allow what is clear from the legislative language of the bill and the report of the conferees to be changed by legislative history on the floor. The language of the bill and the report must take precedence over legislative history made on the floor.

Id. at H10333 (daily ed. Oct. 10, 1974). Representative Hays, the head of the House conferees, also made clear the breadth of the section's intended coverage. In the course of summarizing the Act's main provisions, he stated:

> We also have a little thing in here which I think the Members might be interested in. That is, we require any organization which spends any money or commits any act for the purpose of influencing an election, must report as a political committee, except that if it only reports to its members, it is exempt; but if it goes national and issues reports purporting to condemn somebody for voting such a way, it has to report. We have to know the source of its income. If we want to know who that is aimed at, I do not want to say out loud, but their initials are C.C.

Id. at H10327 (daily ed. Oct. 10, 1974). Representative Hays later made it clear that the organization referred to was Common Cause. *Id.* at H10330 (daily ed. Oct. 10, 1974).

141. Section 437a might, of course, leave open one avenue for groups wishing to maintain the privacy of their contributor lists while discussing public issues: they could refrain from mentioning candidates' positions or listing incumbents' voting records. But, to do this, the group would have to be extremely careful about mentioning even the names of those who held a particular position on an issue, lest one of them turn out to be a candidate for federal office, thereby triggering § 437a. Such watered-down and cautious discussion is hardly the "uninhibited, robust and wide-open" debate on public issues which the First Amendment was designed to foster. *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

142. See text at notes 138–41, *supra*. We emphasize that our holding on statutory vagueness and overbreadth rests on the peculiar context of § 437a, and not necessarily on qualities inherent in the language "for the purpose of influencing" and "design[] to influence." In other situations, those phrases might be acceptable, as *National Committee for Impeachment* and *ACLU v. Jennings*, *supra*, demonstrate. It is only because the text and legislative history of § 437a prevent a similar interpretation that we reach a conclusion different from that reached in those two cases, and our holding is not meant to cast doubt on the continuing validity of the sections construed in those cases.

visions derive from the 1971 Federal Election Campaign Act, and were in effect for three years before section 437a was added by the 1974 Amendments. Even in 1974, the section 437a provision was injected by the Conference Committee when the amending process had been virtually completed. The Act contains an express severability clause, 2 U.S.C. § 454, and the plaintiffs concede that this section is severable.[143] We accordingly hold section 437a invalid, but severable, and the rest of the statute stands for consideration.

VI. *Public Financing and Subtitle H*

The major constitutional objections lodged against the public financing provisions[144] may be categorized under two heads: first, that providing public funds for presidential campaigns[145] and party conventions exceeds the bounds of Congress's powers to tax and spend under article I, section 8, clause 1 of the Constitution;[146] and second, that even if Congress has power to provide for public financing of elections, the scheme used here discriminates against minor and new parties and independent candidates.[147]

143. Reply Brief at 92.

144. Public financing is the subject of certified Questions (5) and (6):

> (5) Does any statutory provision for the public financing of political conventions or campaigns for nomination or election to the Presidency or Vice Presidency violate the rights of one or more of the plaintiffs under the First or Ninth Amendment, the Due Process Clause of the Fifth Amendment, or Article I, Section 8, Clause 1, of the Constitution of the United States?
>
> (6) Do the particular provisions of Subtitle H and § 6096 of the Internal Revenue Code of 1954 deprive one or more of the plaintiffs of such rights under the First or Ninth Amendment or Article I, Section 8, Clause 1, in that they provide federal tax money to support certain political candidates, parties, movements, and organizations or in the manner that they so provide such federal tax money?

The passage of the public financing provisions marked the first time this country has authorized use of public funds to pay election campaign costs. Similar legislative schemes, however, have been in effect for some time in several states, Puerto Rico, and many European countries, including Germany, Sweden, Norway and Finland. *See Developments in the Law—Elections*, 88 *Harv.L.Rev.* 1111, 1266 & n. 176; Casper, *Williams v. Rhodes and Public Financing of Political Parties under the American and German Constitutions*, 1969 *Sup.Ct.Rev.* 271, 288 302; Nils Andren *Partisan Motivations and Concern for System Legitimacy in the Scandinavian Deliberations on Public Subsidies*, in *Comparative Political Finance* 50 (A. Heidenheimer ed. 1970).

145. Plaintiffs assert that limiting public financing to presidential campaigns will not survive strict scrutiny. But

> the principle that calls for the closest scrutiny of distinctions in laws *denying* fundamental rights . . . is inapplicable; for the distinction challenged by appellees is presented only as a limitation on a reform measure aimed at eliminating an existing barrier to the exercise of the franchise. Rather, in deciding the constitutional propriety of the limitations in such a reform measure we are guided by the familiar principles that a "statute is not invalid under the Constitution because it might have gone farther than it did," . . . that a legislature need not "strike at all evils at the same time," . . . and that "reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind," . . .

Katzenbach v. Morgan, 384 U.S. 641, 657 (1966) [citations omitted].

146. "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States . . ."

147. Plaintiffs also claim that, as with religion, the government is prohibited by the First Amendment from using public funds to finance presidential elections. Plaintiffs are simply wrong. The First Amendment does indeed prohibit the Congress from establishing religion or preventing its free exercise. But no one has ever seriously argued that both these twin prohibitions apply even by analogy in the area of freedom of speech or of association. While Congress, of course, may not prefer one political group over another, it certainly has the right and in some cases the duty, to encourage the exercise of the political freedoms that are embraced in the First Amendment's speech, press and association provisions. In Healy v. James, 408 U.S. 169 (1972), for example, the court held that, under the circumstances there presented, a state university had to do more than simply permit a student political organization to associate informally and engage in free speech; it was required to provide facilities for the exercise of those rights.

A. *Congress's Power to Provide for Public Financing*

The Supreme Court has held that the power of Congress to tax and spend for the "general Welfare of the United States" is entitled to a broad construction. That power is not limited to the direct grants of legislative power found in the Constitution. *United States v. Butler*, 297 U.S. 1, 66 (1936). The Congress has determined that providing public funding for the three stages of the Presidential selection process would advance the general welfare of the nation by reducing the reliance of Presidential candidates on large contributors, thus reducing their influence on the outcome of elections and on the operation of government. We are in no position to quarrel with that judgment. As the Supreme Court has observed in a slightly different context: "Viewing the myriad governmental functions supported from general revenues, it is difficult to single out any of a higher order than the conduct of elections at all levels to bring forth those persons desired by their fellow citizens to govern." *Bullock v. Carter*, 405 U.S. 134, 148–149 (1972).

The plaintiffs suggest, however, that the particular means chosen by Congress to allocate tax monies to the Presidential Election Campaign Fund requires that we invalidate the overall spending scheme. The Fund derives from voluntary "tax checkoffs" by individual taxpayers, who may, but need not, direct that one dollar of their tax liability go to the Fund. 26 U.S.C. § 6096. Payments from the Fund issue on the basis of objective formulae established in 26 U.S.C. §§ 9004, 9006, 9008 and 9034, regardless of candidate or party preferences of the taxpayers who have checked off the dollars. The objection seems to be that the voluntary checkoff is not sufficiently voluntary, that the taxpayer must have the freedom to designate which party or candidate will receive his checked-off dollar.

It is true that some plans for public financing, such as the "voucher" system suggested by Senator Metcalf (*see* Brief for Amicus Curiae Senator Lee Metcalf at 24–25), do allow the taxpayer this choice. We assume that Congress might well have adopted that system, without constitutional objection, but we cannot say that the Constitution requires that the taxpayer have such an option. If it is established that the Congress has power under article I, section 8, clause 1, to expend money to fund candidate campaigns, then surely Congress could do so simply by appropriating the sums to the Presidential Election Campaign Fund without giving individual taxpayers any control at all. *A fortiori* Congress can establish a system which gives the taxpayer some choice—in affecting the total amount of public funds to be distributed on the Congressional formula—without going all the way to permit each taxpayer complete authority over the disposi-

tion of his dollar of tax obligation. If the taxpayer wants to avoid any conception that some part of "his" tax money will benefit candidates he does not favor, then he can simply refrain from checking off his dollar for the Fund.

B. *Discrimination Against Third Parties and Independents*

A more serious objection to the public financing provisions lies in the charge that they unfairly discriminate against minor and new party candidates and against independents. The federal courts have often indicated the importance to the American political system of minor parties and independent candidates. *See Sweezy v. New Hampshire*, 354 U.S. 234, 250–251 (1957) (plurality opinion of Mr. Chief Justice Warren); *Williams v. Rhodes*, 393 U.S. 23, 31 (1968). More recently the Supreme Court has emphasized that legitimate governmental interests in protecting the electoral process "must be achieved by a means that does not unfairly or unnecessarily burden either a minority party's or an individual candidate's equally important interest in the continued availability of political opportunity." *Lubin v. Panish*, 415 U.S. 709, 716 (1974). To this end, the courts have traditionally scrutinized carefully state schemes for regulating access to the ballot, and have not hesitated to strike down a scheme when it placed unreasonable obstacles in the way of candidates or parties. *Williams v. Rhodes, supra*; *Bullock v. Carter*, 405 U.S. 134 (1972).

We are, of course, well aware that provisions for public funding of Presidential campaigns, like provisions regulating access to the ballot, could operate to give an unfair advantage to established parties, thus reducing, to the nation's detriment, what the Supreme Court has called the "potential fluidity of American political life." *Jenness v. Fortson*, 403 U.S. 431, 439 (1971). Therefore we have given careful consideration to the framework of the public financing provisions. We do not find them, on their face, to be invidiously discriminatory. At the same time, we recognize the necessity for all concerned to maintain a careful scrutiny as the provisions are implemented.

The statutory scheme [148] gives evidence that here Congress has made a serious and conscientious attempt to implement a system that recognizes appropriate differences among parties but permits flexibility and change. It allows for new parties to grow and for old ones to wither and die; within reasonable bounds, the funding levels will follow these patterns of popular support. Moreover, Congress has chosen to have funding levels depend upon objectively measurable indicators of support—voting levels, past or current, in the case of the general election; [149] contribution levels, within limits, in the case of the funding of primary campaigns.[150]

The plaintiffs argue that minor parties and new parties [151] are harmed by the provisions for funding of candidates in

148. Under the statutory scheme, whether or not public funding is available, the same spending limits apply to all candidates. 18 U.S.C. § 608(c)(1)(B), 26 U.S.C. §§ 9003(b), (c). To the extent that public funding is not available, private funding is not foreclosed. *Id.* § 9003(c).

149. 26 U.S.C. § 9004(a).

150. *Id.* §§ 9033(b), 9034.

151. "Major party," "minor party," and "new party" are defined in 26 U.S.C. § 9002 as follows:

> (6) The term "major party" means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office.
>
> (7) The term "minor party" means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 5 percent or more but less than 25 percent of the total number of popular votes received by all candidates for such office.
>
> (8) The term "new party" means, with respect to any presidential election, a political party which is neither a major party nor a minor party.

primaries and in the general election and certain nominating conventions. We examine general election funding first.

General Election Provisions

We start with the recognition that Congress, in order to provide public funds for some candidates for President, is surely not required to provide equal funds to all who declare themselves Presidential candidates. Such a system would not only make it easy to raid the United States Treasury, it would also artificially foster the proliferation of splinter parties. "[A] State has an interest, if not a duty, to protect the integrity of its political processes from frivolous or fraudulent candidacies." *Bullock v. Carter*, 405 U.S. 134, 145 (1972). So too does the federal government. And the Supreme Court has said expressly that a state has a "compelling" interest in protecting the stability of its political system by refraining from encouraging "splintered parties and unrestrained factionalism." *Storer v. Brown*, 415 U.S. 724, 736 (1974).

In *Jenness v. Fortson, supra*, the Court recognized that "[s]ometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike. . . ." *Id.* at 442. Congress was therefore entitled to take into account the obvious fact that there are differences in support among political movements. And to reflect those differences, Congress placed reliance, for the funding of general elections, on a system quite similar to the one Georgia has used to regulate access to its ballot, a system upheld without dissent in *Jenness*.

In the general election, major party candidates (candidates of parties which received at least 25 percent of the electoral vote at the preceding general election) are entitled to an equal level of funding up to the statutory maximum, $20 million plus adjustments for inflation. 26 U.S.C. § 9004(a). Minor party candidates (candidates of parties which received between 5 percent and 25 percent of the vote in the last election) receive pre-election funding at a level proportionate to their showing in the previous election. *Id.* § 9004(a)(2)(A). New party candidates (parties which did not achieve a 5 percent showing) are not entitled to pre-election funding, but they are entitled to post-election funding if they achieve 5 percent or more of the vote; the amount will be in proportion to their vote total relative to that of the major party candidates. *Id.* § 9004(a)(3). A similar provision allows minor party candidates to receive additional post-election monies if they improve their vote percentage over the last election. *Id.*

We recognize that under this scheme pre-election funding will depend on figures almost four years old. But other devices which might have been chosen to make the figures more current have their own potential deficiencies. Reliance, for example, on opinion polls or

on more subjective determinations of current support by the Commission has obvious drawbacks, and could only lead to controversy that would divert energies and resources from the campaigns themselves. Moreover, support for a candidate at an early stage is often shallow. The differences that develop between candidates as they take to the stump often changes their appeal, for better or worse. So early prophecies are chancy and later may seem foolish. On the other hand, funding candidates on indications of early strength creates the danger of a self-fulfilling prophecy. Evidencing support by petition signatures may provide an objective and more current measure, but again it would siphon off considerable campaign energies into a petition drive. A system of matching grants, based on the private contributions a candidate or party was receiving, similar to the system for public funding of primary campaigns,[152] is a more eligible alternative. But it too yields a more cumbersome system, and Congress was acting within proper bounds when it chose to relieve serious candidates of a least some of the burdens of fund raising once they had achieved nomination, and to make it clear to all candidates from the beginning what level of funding would be available to each and to each of his or her competitors.[153] Whatever alternative system might have been possible, the legislative history indicates that Congress had in mind the Supreme Court's specific approval in *Jenness* of a system which bases differential treatment on "demonstrated relative strength" in prior elections. *S.Rep.No.* 93–689, 93d Cong., 2d Sess. 9 (1974). In light of Congress's adherence to *Jenness*, we cannot say it acted improperly.

It was noted by the court in *Jenness* that even if a candidate failed to garner enough petition support to win a place on the printed ballot, he still had an alternative path open toward eventual election. He could be elected on the strength of write-in votes. *Jenness v. Fortson*, *supra*, at 434. There was, of course, no suggestion that a write-in candidacy was as attractive as appearing on the ballot. Similarly, under the general election funding established by the challenged statutes, a third party or independent candidate retains alternative means of getting his message across to the voters—through private funding. No one asserts that this option is as attractive as full public financing, but it should be borne in mind that smaller parties are likely to be the major beneficiaries of another part of the statutory scheme, the expenditure ceilings. Those ceilings have been set at a level significantly below major party spending in the 1972 election.[154] Even relying on private funding, then, third party and independent candidates are now in a better position to approach the spending levels of the major parties. Chapter 95 makes it clear that the expenditure limits are an integral part of the overall public financing scheme. *See* 26 U.S.C.

152. *Id.* § 9034.

153. Even though the figures used for pre-election funding are not completely current, Congress has to some extent cured the problem by the provisions for post-election funding, based on the actual election results. *Id.* § 9004(a)(3).

154. In 1972 Presidential campaign spending alone totaled $94.4 million—up 67 percent from $56.4 million in 1968; up 148 percent from $38.1 million in 1964; and up 247 percent from $27.2 million in 1960. Findings IIA, ¶ 51; I, ¶ 89. In 1972 the reported spending by the candidates was Nixon $55.2 million and McGovern $38.2 million. Findings IIA, ¶ 51.

§§ 9003(b)(1), 9004(a)(1). Viewed in this context we are not prepared to say that the provisions for general election funding invidiously discriminate against third parties and independents.[155]

Convention Funding

The major parties are entitled to receive full public funding for their conventions (up to $2 million plus inflation adjustments), *id.* § 9008(b)(1), and minor parties are entitled to a percentage of that amount using the same formula that applies for general election candidates. *Id.* § 9008(b)(2). For the same reasons that we found persuasive in upholding the general election financing provisions, we find no constitutional infirmity here. The provisions are a reasonable way of recognizing differences in strength among parties, and once again minor and new parties are not barred from putting on just as elaborate a convention as major parties, although they would have to fund all or part of it with private funds. The ceiling on convention expenditures puts equivalent convention spending more within their grasp, if they choose to apply their funds in this fashion. *Id.* § 9008(d). Unlike the general election provisions, the convention financing sections allow for no post-election reimbursement of convention expenses, no matter how well a new or minor party fares in the election. But this is not fatal to the statute. The fact that Congress has chosen to adopt an adjustment provision in one part of the scheme does not mean that it is required to do so as to all portions.[156]

Whatever doubts there might otherwise be about these provisions are put to rest by the Supreme Court's decision in *American Party of Texas v. White*, 415 U.S. 767 (1974). *White* held that a state could fund the expenses major parties incurred in selecting their candidates for the general election, without being required to "finance the efforts of every nascent political group seeking to organize itself . . . to win a place on the general election ballot." *Id.* at 794.

Primaries

The challenged statutes also provide for public financing of the primary election campaigns of candidates who meet the threshold requirements of the act. Plaintiffs do not contend that a primary funding plan is invalid unless it provides funds to all persons who declare themselves candidates; indeed, such a contention could not be sustained. *See American Party of Texas v. White*, *supra*, at 793–794. Rather, they level their attack at the particulars of the requirements a primary candidate must meet before qualifying for public funds. To be eligi-

155. Our conclusion is not disturbed by the fact that major parties, regardless of actual showing in the previous election, are entitled to equal payments from the Fund, whereas minor parties are tied to a level which is exactly proportionate to their track records. 26 U.S.C. § 9004(a). This feature simply reflects Congress's recognition that historically the only viable challenges to the incumbent major party have generally come from the other major party. Equal funding thus serves to reduce, or at least not to heighten, the advantages of incumbency. We have no doubt that is permissible for Congress to recognize "that there are obvious differences in kind between the needs and potentials of a political party with historically established broad support, on the one hand, and a new or small political organization on the other." Jenness v. Fortson, *supra*, at 441. Congress has here recognized those differences without foreclosing the opportunity of other parties to grow and eventually to take the place of those which are currently major parties.

156. *See* note 145 *supra*.

ble, a candidate must certify that he is seeking the nomination of a political party for the office of President and that he has received $5000 in contributions in each of 20 states. 26 U.S.C. § 9033(b)(3). Only the first $250 of the contribution of any individual may be counted toward the $5000 total. *Id.* § 9033(b)(4). Once a candidate qualifies, he or she is eligible for public funding on a matching basis: each dollar contributed privately will be matched by a dollar from the Presidential Election Campaign Fund. Again, only $250 of any one individual's contribution will be matched. *Id.* § 9034.

We find nothing invidiously discriminatory about these provisions. They simply require that a candidate demonstrate a "significant modicum of support," *Jenness v. Fortson, supra*, at 442, before becoming entitled to public funding. Since many primary candidates (unlike major and minor parties) would not have a track record of voting support in the previous election, Congress had to choose a different measure to assure that funding went only to serious national contenders. The device it chose—the level of small contributions—is workable, and obtaining small contributions is certainly an avenue open to all contenders. Nor is there anything unusual in the provision for matching payments; matching federal payments have become familiar in programs of federal aid to states and localities.[157] We note, moreover, that the primary funding provisions do not discriminate between candidates of major, minor, and new parties; once the threshold level is achieved, contributions to a candidate who seeks the nomination of a small party will be matched on exactly the same ratio as that available to major party candidates: one public dollar for one private dollar, up to $250 per contributor. Nor do we think that Congress has set the threshold amount, in absolute dollar terms, at an unreasonably high level. The statute requires that a total of $100,000 be raised (with appropriate geographic distribution—a factor we consider below) before matching federal funds start to flow. That figure is a mere one percent of the expenditure ceiling for primary campaigns, $10 million. 18 U.S.C. § 608(c)(1)(A). In light of the history of high costs of Presidential campaigns,[158] Congress was certainly permitted to conclude that a candidate had not demonstrated a "significant modicum" of support until he or she achieved the $100,000 level.

It is not enough under the statute, however, to gather $100,000 in contributions of $250 or less. That amount must be collected in amounts of at least $5000 in each of at least 20 states. 26 U.S.C. § 9033(b)(3). As plaintiffs point out, this is a significant qualification; because of it a candidate with substantial support concentrated primarily in a few, but heavily populated, states might be unable to qualify for public funding. Plaintiffs argue strenuously that *Moore v. Ogilvie*, 394 U.S. 814 (1969), requires that we invalidate this provision of the primary financing scheme. We disagree.

In *Moore*, the Supreme Court invalidated a provision of Illinois's ballot access law which required a wide geographic dispersal of voters who signed nominating petitions for candidates for statewise office. It was not sufficient for candidates to present petitions with the requisite total of signatures; they had to obtain signatures from at least 200 voters in each of at least 50 counties.[159]

The Illinois provision required a demonstration of support from nearly 50% of the state's geographic subdivisions; the primary financing scheme here requires a superficially similar showing from 40% of the jurisdictions. But we cannot mechanically apply the *Moore* holding, which dealt with a race for statewide office, to a scheme which operates for the election of a President.[160] "Presidential elections differ from state elections and in a sense are *sui generis*." *Irish v. Democratic-Farmer-Labor Party of Minnesota*, 287 F.Supp. 794, 803 (D.Minn.), *aff'd*, 399 F.2d 119 (8th Cir. 1968). The major difference, as the *Irish* court noted, lies in the fact that Presidents are chosen by the electoral college.

A successful presidential candidate is not necessarily the one who gains a majority of the popular vote; he must win a majority in the electoral college. Since a state's electoral votes traditionally go in a block to the candidate who wins the popular vote in that state, whether the margin of victory is one vote or 100,000, a serious *national* candidate cannot avoid the need for broadening his base of support beyond a few States. Campaign strategy must be aimed at carrying states, not simply at increasing popular vote totals.

Moore was decided against a background of cases which have been uniformly hostile to *state* election schemes which give unequal weight to the votes of citizens, depending upon what section of the state they live in. *See, e. g., Gray v. Sanders*, 372 U.S. 368 (1963); *Reynolds v. Sims*, 377 U.S. 533 (1964). *Moore* simply extended the equal protection principle of those cases to a ballot access scheme which gave unequal weight to the signatures of voters, depending upon their county of residence. But this equal protection principle cannot apply with the same force to Presidential elections, since it is the Constitution itself which provides for the electoral college, and the electoral college is not based upon strict adherence to an equal population formula. The Supreme Court has been sensitive to this difference, and to the unique historical circumstances which gave rise to the electoral college system. It has not allowed the states to use the

157. *See, e. g.*, 42 U.S.C. § 1857c (1970) (Clean Air Act); 23 U.S.C. § 120 (1970) (Highway Trust Fund).

158. *See* note 154 *supra*.

159. The Supreme Court succinctly demonstrated the arbitrariness of the Illinois statute in *Moore*:

> Under this Illinois law the electorate in 49 of the counties which contain 93.4% of the registered voters may not form a new political party and place its candidates on the ballot. Yet 25,000 of the remaining 6.6% of registered voters properly distributed among the 53 remaining counties may form a new party to elect candidates to office.

Moore v. Ogilvie, 394 U.S. 814, 819 (1969).

A milder requirement of geographic disperal of support, which appeared in the statutory successor to the act struck down in *Moore*, was recently invalidated in Coummunist Party of Illinois v. Illinois State Board of Elections, 44 *U.S.L.W.* 2012 (7th Cir. June 27, 1975). The milder scheme is also distinguishable, however, from the instant provisions which relate to a Presidential election rather than a state election.

160. We note at the outset that the burdens imposed by the 20-state requirement are arguably less onerous than the Illinois requirements challenged in *Moore*. The requirement here can, after all, be met by the actions of 20 individuals in a state, who are not themselves required to be registered voters; no state has fewer than 300,000 people, according to the 1970 census. *U. S. Bureau of the Census, Statistical Abstract of the United States*: 1973, at 14 (94th ed.) By contrast, the statute in *Moore* required the actions of at least 200 registered voters in a county; the 53 smallest counties in the state, combined, had only 6.6 percent of the registered voters in the state. 394 U.S. at 819.

electoral college analogy as a justification for schemes which give unequal weight to the votes of people in various subdivisions of a state. *See Gray v. Sanders, supra,* at 378–379. *See also Wesberry v. Sanders,* 376 U.S. 1, 9–14 (1964). The reverse is also true: one must be extremely careful in applying cases which strike down state voting (or ballot access) disparities to federal schemes where the electoral college is properly a factor.

We have held that it is permissible for national parties, in apportioning convention delegates among states, to depart from strict adherence to a population principle and to rely, in part at least, on an allocation scheme which reflects a state's strength in the electoral college. *Bode v. National Democratic Party,* 146 U.S.App.D.C. 373, 379–380, 452 F.2d 1032, 1308–09, *cert. denied,* 404 U.S. 1019 (1972). We based our holding on the fact that the convention delegates convene "to nominate candidates, not for state or county offices, but for President and Vice-President, whose very elections are to be made by the electoral college." *Id.* If the national parties may take the electoral college into consideration in allocating delegates among states, then surely Congress may take the same factor into account in allocating public funds to candidates in Presidential primaries. The 20-state requirement simply reflects the realities of Presidential campaigning. It looks to geographic dispersal of support among "sovereign States," which are represented as such in the electoral college, not among "non-autonomous creatures of the State,"[161] like the Illinois counties involved in *Moore.* Since the requirement provides a means for limiting public funding to serious national candidates, we do not find it to be invidiously discriminatory.[162]

Alleged Discrimination Against Independents

To this point we have been concerned primarily with impact of the public financing provisions on minor or new parties. The plaintiffs also challenge the public financing provisions on the grounds that they discriminate against independent candidates with respect to convention and primary funding. Obviously, an independent candidate who by definition participates in no primaries and is not nominated at a convention is ineligible for convention and primary funding. It is true that party candidates may obtain some lingering benefit from the public funds that were expended during the primary campaign which carries over to the general election race, a benefit unavailable to independents. But we do not think that an incidental difference of this sort constitutes invidious discrimination. It is simply a byproduct of the fact that party nomination and independent candidacy constitute alternative routes to the November ballot, each with its distinctive advantages and disadvantages.[163] Congress may reasonably choose to apply public financing only to the more common route, leaving to another day consideration of financing alternative routes. *American Party of Texas v. White,* 415 U.S. 767 (1974) provides solid authority for this proposition. Texas law required that major parties (defined as those which received more than 200,000 votes in the last election) nominate their candidates by primary election. All other parties and independent candidates had to seek access to the ballot by other means—either by precinct, county, and state conventions or by petition; they were not permitted to hold primaries.[164] The law provided that the state would pay the costs which parties incurred in primaries, but not the costs of conventions or petition drives; the legislature appropriated over $3,000,000 to the two major parties to pay their expenses in connection with the 1972 primary election. *Id.* at 792. The Supreme Court upheld the law:

> They [the minority parties] must undergo expense, to be sure, in holding their conventions and accumulating the necessary signatures to qualify for the ballot, but we are not persuaded that the State's refusal to reimburse for these expenses is any discrimination at all against the smaller parties and if it is, that it is also a denial of the equal protection of the laws
>
> . . . .
>
> . . . [W]e cannot agree that the State, simply because it defrays the expenses of party primary elections, must also finance the efforts of every nascent political group seeking to organize itself and unsuccessfully attempting to win a place on the general election ballot.

Id. at 793–794.[165]

A more serious potential problem relative to independent candidates inheres in the provisions for general election funding. On their face, they provide funding only to candidates of "parties"—major, minor, or new. This is also true of the crucial provision (so far as independents

161. Bode v. National Democratic Party, *supra,* 146 U.S.App.D.C. at 379, 452 F.2d at 1308.

162. For the same reasons, we find no constitutional objection to the requirement that a candidate be on the ballot in 10 states before becoming entitled to general election funding. 26 U.S.C. § 9002(2)(B).

163. Getting on the November ballot by petition involves an entirely different set of burdens and financial costs than does the primary-convention route. Those pursuing the primary-convention route must seek to generate sufficient support to defeat other contenders for a major party nomination, and do so long before November. The petition route is tedious, but the only direct opposition faced by an independent is that of the party nominees in November. The primary-convention route, for which federal matching funds are provided, is generally much more expensive. It also involves direct opposition in nearly every primary entered, the risk that a skipped primary will benefit some other contender, and direct opposition at the convention.

While a candidate pursuing the petition route can build his campaign steadily toward the November general election, one following the primary-convention route has split objectives. He must do any array of things—some counter-productive as far as the general election is concerned—designed to garner delegate votes by the time of the convention. If he fails, his campaign has ended. If he succeeds, he must take the nomination to a different and far wider constituency than that required to win the nomination, and because of blood-letting and positions taken in the primaries, this shift of audience is often highly detrimental to a candidate. Of course, the candidate of a major party selected by the primary-convention process generally stands in a far stronger position than an independent also appearing on the November ballot. That is why the nomination of a major party is so sought after. But Congress may distinguish between paths to the White House, and may choose to apply public financing during the matching payment period only to the more contested ballot position route, so long as in doing so it does not effectively deny minor parties or independents ballot access, as in Williams v. Rhodes, *supra,* or increase the relative burden upon candidates pursuing those other paths.

164. For the 1972 and 1974 elections only, a party of intermediate size (one which polled between 2% and 200,000 votes in the preceding gubernatorial election) could choose between convention and primary for selecting its candidates. Starting in 1976 such a party would not have the option of holding a primary. 415 U.S. at 773 n.5.

165. *See also* note 145 *supra. Cf. Jenness v. Fortson, supra,* at 440–441.

are concerned) providing post-election funding for minor and new parties based on receiving 5 percent or more of the votes cast in the current election. 26 U.S.C. § 9004(a)(3). If these provisions would in fact operate to prevent independents from obtaining public funding, no matter what their showing, or if they would require that independents go to the trouble of creating elaborate party machinery in order to obtain public funding, then they would raise serious constitutional questions. *See Storer v. Brown, supra,* at 745–746. But the statute does not command that interpretation. The term "political party" is not defined in the public financing provisions. There is thus ample room for the Commission or the officials in charge of disbursing funds to find that even informal committees formed to support independent candidates for President constitute political parties for the purposes of Chapter 95.[166] Until it is shown that a narrower definition is being applied, to the detriment of independent candidates who would otherwise qualify, we are in no position to invalidate the public financing provisions of the statute.

VII. *Federal Election Commission*

In the initial section of this opinion, we drew attention to a distinctive feature of this effort by Congress to deal with the evils of uncontrolled campaign financing, namely, the multipronged nature of the attack. To the expanded and tightened requirements of disclosure—an approach which has heretofore failed to do the job—there have been added measures designed to shrink the sheer volume of dollars going into the election process by limitations upon both giving and spending, and by substituting private for public money. One would be bold to assert that this greatly broadened strategy is certain to be successful, but we, in common with most observers, have credited Congress with legitimate objectives and a visible degree of rationality in its choice of means to achieve them. We have, in consequence, conceived the circumstances to be such that a court should be slow to stop the experiment in its tracks by findings of facial unconstitutionality.

We now address an equally distinctive element—and conceivably one of the most hopeful aspects——of that experiment. That is the creation, for the first time in the history of federal legislation relating to campaign financing, of a full-time agency authorized and empowered to make it work. As might be expected in an area as novel and complex as this, which implicates all segments of the federal establishment, the manner of constituting that agency, the tasks assigned to it, and the authority conferred upon it are in many respects unique. It may eventually prove to be true that some of that authority may be found, when and if exercised in a concrete context, in conflict with the Constitution. But so essential to the effective functioning of the overall legislative scheme is the existence of the new agency contrived to monitor and administer it that a court should be alert to the relationship of the agency to that scheme. The one without the other risks the frustrations and failures of the past. Unless it can clearly find that the agency is wholly without legitimacy in the very terms by which it is brought into being, the court's hand should be stayed.

Montesquieu, in formulating his great concept of the separation of powers, had no prevision of the problem of money in popular elections. Indeed, the Framers when they embraced that concept did not even envision the advent of political parties. It would be unfortunate if a judicial preoccupation with the deceptive neatness of the dividing lines assumed by the doctrine were permitted to obscure the common interest of all branches in the purity of the process by which political power is achieved and transferred.

The FECA Amendments of 1974 established an eight member Federal Election Commission to administer, obtain compliance with, and formulate policy with respect to FECA and certain election law crimes codified in title 18 of the United States Code.[167] 2 U.S.C. §§ 437c(a)(1), (b). The Secretary of the Senate and the Clerk of the House are ex officio nonvoting members of the Commission.[168] *Id.* § 437c(a)(1). Of the six remaining members, two are appointed by the Senate, two by the House, and two by the President,[169] with a safeguard against the members in each "group" being affiliated with the same political party. *Id.*

Congress has delegated to the Commission a broad range of powers to enable it to accomplish its statutory responsibilities. *See id.* §§ 437d–h, 438, 456. Included among its major powers are rulemaking,[170] subpoena, a power to require submission of written reports, a power to conduct investigations and hearings, a power to initiate civil actions to enforce FECA,[171] a power to request the Attorney General to institute civil actions to

166. 26 U.S.C. § 9002, after defining major and minor parties, states: "The term 'new party' means, with respect to any presidential election, a political party which is neither a major party nor a minor party." *Id.* § 9002(8). Apparently "new party" is an "all-others" provision which includes independents such as plaintiff McCarthy, who is the nominee of a group which calls itself The Committee For Constitutional Presidency—McCarthy '76. Compare 2 U.S.C. § 431(m), defining a "political party."

167. 18 U.S.C. §§ 608, 610–11, 613–17.

168. Neither of the ex officio members can serve as chairman or vice chairman of the Commission. 2 U.S.C. § 437c(a)(5).

169. The Congressional appointees are actually appointed by the President pro tempore of the Senate and the Speaker of the House of Representatives upon the recommendations of the majority and minority leaders of their respective houses. *Id.* § 437c(a)(1). All appointments (including the Presidential appointments) are subject to confirmation by a majority of both Houses of Congress. *Id.*

The appointed members of the Commission, who at the time of their appointment cannot be elected or appointed officers or employees in the executive, legislative, or judicial branch of the federal government, *id.* § 437c(a)(3), generally serve a six year term. *Id.* § 437c(a)(2). The terms of the initial appointees are varied in order to assure that one term expires each year. *See id.*

170. The Commission argues that it "appears to have no general substantive rulemaking authority with regard to the Title 18 spending and contributions limitations, although it is authorized to make such rules in one limited area, that of allocating primary campaign expenditures, as between states when such expenditures are made for use in two or more states (§ 608(c)(4))." Brief at 55. *See* 2 U.S.C. § 438(d)(1). Intervening Defendants Common Cause and John Gardner, relying on *id.* § 437d(a)(8), argue that the Commission does have rulemaking authority over the relevant title 18 provisions. Supplemental Reply Brief at 17–18. *See also* Reply Brief for Plaintiffs at 107–08. Our disposition of Question 8(d) as unripe, *infra*, makes it unnecessary for us to resolve the issue.

171. The Commission, relying on 2 U.S.C. § 437g(5), also argues that it "appears" to have no independent civil enforcement authority with respect to the spending and contribution limitations in title 18. Brief at 54–55. But Intervening Defendants maintain that the Commission's independent enforcement authority covers title 18. Brief at 7–17. As with the dispute over the scope of the Commission's rulemaking authority, *see* note 170 su-

It is ORDERED by the Court on Page 1570, Second Column, Third and Fourth lines, delete the words "private for public" and substitute therefor the words "public for private".

obtain compliance with FECA and certain election law criminal provisions,[172] and a power to issue advisory opinions.[173] Congress has also given the Commission the power to impose a temporary disqualification on any candidate for election to federal office if the Commission finds that the individual, while a candidate, failed to file a report required by title III of FECA. *Id.* § 456.

The District Court has certified six separate questions concerning the powers and method of appointment of the Commission.[174] We reach only the questions concerning the method of appointment of the Commission, its power to issue advisory opinions, and its power to authorize convention expenditures in excess of the limits established by §§ 9008(d)(1), (2) of Subtitle H. We conclude that the other questions concerning specific powers of the Commission are not presently ripe for adjudication.

Question 8(a) asks us to determine whether the method of appointment of the Commission is constitutional.[175] Plaintiffs argue strenuously that the method of appointment violates article II, section 2 of the Constitution. Their argument is strikingly syllogistic: Under article II, section 2 the power of appointment of civil officers of the United States is a Presidential power; the members of the Commission are civil officers; therefore, the appointment of four members of the Commission by the legislative branch of government violates article II, section 2. So construed, article II, section 2 would deprive Congress of all power to appoint its own inferior officers to carry out appropriate legislative functions. We believe that the records of the Constitutional Convention fail to support that construction.

We begin our inquiry into the constitutional history of the appointment power with the Articles of Confederation. Under Article IX of that charter, Congress alone had the power to appoint "such other committees and civil officers as may be necessary for managing the general affairs of the United States . . . ." The merits of that allocation of power were raised and considered at the Constitutional Convention, and the Framers of the Constitution eventually substituted the method of appointment embodied in article II, section 2:

pra, our disposition of Questions 8(b) and 8(c) as unripe, *infra*, eliminates the need to resolve whatever ambiguity there may be in the statute.

172. *See* note 167 *supra*.

173. The list in the text is not intended to be exhaustive. For example, the Commission also has the power under Subtitle H to institute civil actions for declaratory or injunctive relief concerning any matter covered by the Presidential Election Campaign Fund Act (26 U.S.C. §§ 9001–21), the Presidential Primary Matching Payment Account Act (*id.* §§ 9031–42), and section 302(a) of the Presidential Election Campaign Fund Act of 1966 (*id.* § 6096). *See id.* §§ 9010(c), 9040(c). And the Commission has the power to sue to obtain repayment of amounts that the Commission concludes are payable to the Secretary of the Treasury. *See id.* §§ 9010(b), 9040(b). The certified questions did not raise the issue of the constitutionality of the Commission's independent enforcement authority under Subtitle H.

174. 8. Do the provisions in the challenged statutes concerning the powers and method of appointment of the Federal Election Commission violate the rights of one or more of the plaintiffs under the constitutional separation of powers, the First, Fourth, Fifth, Sixth, or Ninth Amendment, Article I, Section 2, Clause 6, Article I, Section 5, Clause 1, or Article III?

[The text of the six subparts to Question 8 are reprinted at notes 175, 182–83, 198 *infra*.]

175. 8(a) Does 2 U.S.C. § 437c(a) violate such rights by the method of appointment of the Federal Election Commission?

> [The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The debates of the Convention evidence two competing concerns that led the Framers to substitute the present appointment process for Article IX—a fear that the appointment power could not be effectively and responsibly managed by a group as numerous and diverse as the legislature,[176] and a fear that centralization of the appointment power in the executive could lead to despotism.[177] The compromise that emerged—appointment of civil officers by the President with the advice and consent of the Senate—reflects both a desire to provide the executive with a role in the appointment process and a concern that the legislature retain some control over executive appointments. Read against the background of these competing concerns, we are not convinced that the Framers intended article II, section 2 to deprive the legislative branch of all power to appoint inferior officers to perform appropriate legislative functions.

Although article II, section 2 is not in terms a bar to the appointment of inferior civil officers by the legislative branch, neither is it an affirmative grant of power to appoint the Federal Election Commission. We conclude, however, that Congress draws sufficient authority from the necessary and proper clause of the Constitution to establish such a Commission to aid in the execution of its power "to provide a complete code for congressional elections, not only as to times and places, but in relation to . . . prevention of fraud and corrupt practices . . . ." *Smiley v. Holm*, 285 U.S. 355, 366 (1932) (interpreting article I, section 4, clause 1). *See Burroughs and Cannon v. United States*, 290 U.S. 534, 544–45 (Congress possesses the power to safeguard Presidential elections from the "improper use of money"); *United States v. Classic*, 313 U.S. 299, 317–320 (1941) (Congress has the power to regulate primary elections "where the state law has made the primary an integral part of the procedure of choice, or where in fact the primary effectively controls the choice . . . .").

We thus conclude that Congress has the constitutional authority to establish and appoint the Federal Election Commission to carry out appropriate legislative functions.[178] As to this part of our

176. *See 1 Farrand, The Records of the Federal Convention of 1787* at 119 (rev. ed. 1966); 2 *id.* at 389, 539.

177. *See* 1 *id.* at 119; 2 *id.* at 81–83, 405.

178. Although the issue was not raised by any party to this litigation, it is possible to argue that the Commission violates the doctrine of separation of powers in that the President appoints two members of a legislative agency. But we can find no consitutional infirmity in the decision of the Congress to invite the participation of the executive in this innovative attempt at election reform. Joint participation on the Commission certainly does not involve the usurping by one branch of the power of another. Congress freely extended an invitation to the executive and the executive freely accepted.

Furthermore, this is not a case in which the legislative branch has delegated performance of its legislative responsibilities to the executive. Congress has merely decided that the

holding, Judges Tamm, MacKinnon, and Wilkey are apparently in agreement.[179] Judge MacKinnon expressly notes in his dissent that the members of the Commission need not be appointed in conformity with article II, section 2 to the extent that the Commission is performing a "legislative function."[180] And Judge Tamm's characterization of the Commission's powers as "executive," "quasi-judicial," and "outside the ambit of Congress' basic constitutional role in the conduct of the federal electoral process"[181] implies that his concern is not that Congress has chosen to appoint members of a commission but rather that Congress has chosen to appoint members of a commission that performs other than appropriate "legislative functions."

Whether the Commission is actually empowered to perform other than appropriate legislative functions is the basic issue raised by Questions 8(b) through 8(e). Question 8(b)[182] focuses on the broad grant of administrative and enforcement powers in 2 U.S.C. §§ 437d, 437g, while Questions 8(c) through 8(e)[183] deal with specific grants of power

Commission could more effectively meet its statutory responsibilities—such as gathering and auditing campaign finance information, certifying eligibility of candidates for public monies, etc.—if the knowledge, expertise, and political presence of the executive were represented through two executive appointees. Rather than violating the doctrine of separation of powers, we think this method of appointment recognizes "the inherent necessities of the governmental co-ordination." J. W. Hampton, Jr. & Co. v. United States, 276 U.S. 394, 406 (1928).

It is a method that Congress has frequently used in establishing other legislative commissions to gather facts and to recommend appropriate legislation. *See, e. g.*, The National Study Commission on Records and Documents of Federal Officials (33 U.S.C. §§ 3315–24) and The Commission on Revision of the Federal Court Appellate System (86 Stat. 807, *as amended*, 88 Stat. 1153) whose members are appointed by representatives of all three branches of government.

179. In fact, there seems to be little, if any, disagreement on this issue. The Attorney General concedes in his Brief that the Commission is "predominantly legislative in its makeup." Brief at 2. He challenges only the grant of civil enforcement powers to the Commission on the ground that the law enforcement function is predominantly executive. *Id.* at 2–9. And even with respect to that issue, he urges the court to conclude that it is not ripe for determination. *Id.* at 2.

Plaintiffs also apparently agree that Congress has the power to appoint a commission to carry out legislative functions. Like Judges Tamm, MacKinnon, and Wilkey, however, they conclude that the Commission exercises executive functions and must therefore be appointed pursuant to the restrictions of article II, section 2. Brief at 258–66; Reply Brief at 93–113.

180. *See* slip opinion page 1616 *infra*.

181. *See* slip opinion page 1608 *infra*.

182. 8(b) Do 2 U.S.C. §§ 437d and 437g violate such rights, in that they entrust administration and enforcement of the FECA to the Federal Election Commission?

183. 8(c) Does 2 U.S.C. § 467g(a) violate such rights, in that it empowers the Federal Election Commission and the Attorney General to bring civil actions (including proceedings for injunctions) against any person who has engaged or who may engage in acts or practices which violate the Federal Election Campaign Act, as amended, or § 608, 610, 611, 613, 614, 615, 616, or 617 of Title 18?

8(d) Does 2 U.S.C. § 438(c) violate such rights, in that it empowers the Federal Election Commission to make rules under the FECA in the manner specified therein?

8(e) Does 2 U.S.C. § 456 violate such rights, in that it imposes a temporary disqualification on any candidate for election to federal office who is found by the Federal Election Commission to have failed to file a report required by Title III of the Federal Election Campaign Act, as amended?

to the Commission. Plaintiffs have asked us to answer thse questions by in effect holding that a statutory grant of other than legislative functions to the Commission is invalid on its face. We believe that the grant of quasi-judicial and quasi-executive functions to a "legislative agency" does not justify a holding that the statute is invalid on its face, and we postpone actually testing certain specific powers of the Commission against the appropriate constitutional standard until such time as those issues are ripe for determination.

At the outset, we emphasize that Congress cannot constitutionally appoint the members of a commission or agency that performs primarily executive or judicial functions. *Springer v. Philippine Islands*, 277 U.S. 189 (1928). Any other conclusion would be contrary to article II, section 2 of the Constitution. But the Federal Election Commission performs at least some primarily legislative functions. Several of the Commission's major responsibilities include gathering and auditing information concerning the financing of federal election campaigns.[184] It is certainly within the sphere of appropriate legislative activity for Congress to gather and audit information to aid it in the process of "preventing fraud and corruption" in federal elections and in formulating legislation to accomplish that goal. *See Barenblatt v. United States*, 360 U.S. 109, 111 (1959) ("[t]he scope of the power of inquiry is . . . as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution."); *McGrain v. Daugherty*, 273 U.S. 125, 175 (1927) ("[a] legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change."). The Commission is also responsible for certifying eligibility for public campaign finance funds and for overseeing the repayment of overpayments or improperly spent funds.[185] These certification and audit functions are quite similar to those exercised by the Comptroller General, a recognized legislative officer.[186] *See* Reorganization Act of 1949, § 7, 63 Stat. 205; 31 U.S.C. § 65(d); *United States v. Stewart*, 234 F.Supp. 94, 99 (D.D.C.), *aff'd*, 339 F.2d 753 (D.C.Cir. 1964).

The problem in this case is that the Commission has also been delegated various quasi-judicial and quasi-executive powers, and the question thus becomes whether Congress can establish and appoint a commission that performs quasi-judicial and quasi-executive funcions *in addition* to the exercise of its primary legislative functions. The Supreme Court answered that question in *Spring-*

184. A variety of reports must be filed with the Commission, including statements of organization of political committees (2 U.S.C. § 433), reports of receipts and expenditures by political committees and candidates (*Id.* § 434), reports from certain contributors to campaigns (*id.* § 434(e)), and statements concerning the financing of and expenditures in connection with Presidential nominating conventions (*id.* § 437).

The Commission is responsible for developing forms for required reports and statements (*id.* §§ 438(a)(1), 434), regulating the manner of reporting unusual items (*id.* §§ 436(c), 437(b), preparing a manual on uniform bookkeeping and filing methods (*id.* § 438(a)(2)), preserving reports and making them available to the public (*id.* §§ 438(a)(4), (5)), performing audits and field investigations (§ 438(a)(8)), and other similar functions.

185. 26 U.S.C. §§ 9005, 9007–09.

186. We intimate no view concerning the constitutionality of the Commission's power to initiate a civil suit to recover excess payments or improperly spent funds pursuant to *id.* §§ 9010(b), 9040(b). *See* note 173 *supra*.

er v. Philippine Islands, supra, concluding that the issue was not whether a function was judicial or executive but rather whether the particular function was sufficiently related to the exercise of an appropriate legislative function. "It may be stated then, as a general rule inherent in the American system, that, unless otherwise expressly provided or *incidental to the powers conferred,* the legislature cannot exercise either executive or judicial power . . . . ." 277 U.S. at 201 (emphasis added). *See Sutherland, Statutory Construction* § 3.06 (4th ed. Sands 1972).

We therefore find ourselves unable to invalidate on its face a statutory provision that confers quasi-executive or quasi-judicial power upon a legislative agency. Whether particular powers are predominantly executive or judicial, or insufficiently related to the exercise of appropriate legislative power is an abstract question that would be better decided in the context of a particular factual controversy.

This is not to say that the specific powers at issue in Questions 8(b) through 8(e) are presumptively incidental (in a constitutional sense) to the exercise of legislative power. Indeed, some of the provisions—for example, those conferring civil enforcement and candidate disqualification powers on the Commission—raise very serious constitutional questions.[187] But those questions can only be addressed and answered when the issues are ripe for adjudication. In its present stance, this litigation does not present the court with the concrete facts that are necessary to an informed decision. No party has been joined in a civil enforcement action initiated by the Commission (Question 8(c)),[188] no one has been disqualified from running for office (Question 8(e));[189] the Commission has enacted no rules (Question 8(d));[190] nor has any party been adversely affected by the exercise of most of the Commission's broad powers under 2 U.S.C. §§ 437d, 437g (Question 8(b)). In fact, some of the issues presented to us in the certified questions may never reach a stage at which they would be ripe for adjudication. The Commission suggested at oral argument, for example, that it would not utilize in its civil enforcement power but would instead refer appropriate cases to the Department of Justice under 2 U.S.C. § 437g(a)(7).[191]

187. These serious doubts are apparently shared by the Special Counsel to the Commission. *See* Transcript of Oral Argument at 162–63, 171.

188. The mere "threat" of civil enforcement by the Commission creates no additional "inhibitory effect" on plaintiffs, since the violations over which the Commission allegedly has civil enforcement authority are also subject to criminal sanctions. *See* 2 U.S.C. § 441.

189. As with the threat of civil enforcement by the Commission, see note 188 *supra,* any alleged inhibitory effect from the threat of disqualification must take into account that the failure to file would also subject a candidate to criminal sanctions. *See* 2 U.S.C. § 441. Of course, it could be argued that a candidate might fear that a bi-partisan Commission, devoted to this Act full-time, might be more likely to start a disqualification proceeding than the Justice Department would be to start a criminal prosecution. But all such matters are entirely too speculative at this time to consider the matter ripe for adjudication.

190. The Commission has published a notice of proposed rulemaking. *See* 40 Fed.Reg. 23833-34 (June 2, 1975).

191. *See* Transcript of Oral Argument at 171. Judge MacKinnon argues in his separate statement that the possibility that civil enforcement will be left exclusively to the Attorney General is irrelevant to the ripeness issue. Slip opinion page 1619 *infra.* His argument is based on a reading of 2 U.S.C. § 437g(a)(7), which provides that "upon request by the Commission the Attorney General on behalf of the United States *shall* institute a civil action for relief . . . ." (Emphasis added.) According to Judge MacKinnon, "[t]he use of the mandatory 'shall' quite clearly indicates Congress intended that the Attorney General would have no discretion to determine whether to initiate civil enforcement proceedings when he receives a referral from the Commission," thus leaving actual enforcement authority in the Commission.

Although we would agree that the use of the word "shall" in a statute is "normally the language of command," Escoe v. Zerbst, 295 U.S. 490, 493 (1935), "shall" may sometimes "be directory only," and its interpretation "depends upon the background circumstances and context in which [it is] used and the intention of the legislative body . . . which used [it]." United States v. Reeb, 433 F.2d 381, 383 (9th Cir. 1970), *cert. denied,* 402 U.S. 912 (1971). Indeed, Special Counsel to the Commission indicated at oral argument that both the Commission and the Attorney General are of the opinion that the Attorney General retains discretion in cases referred to him by the Commission. Transcript of Oral Argument at 162. There is no showing in this case of a convincing legislative history that would enable us to conclude that "shall" was intended to be the "language of command." In the absence of such legislative history, we are unable to agree with Judge MacKinnon that 2 U.S.C. § 437g(a)(7) establishes that Congress intended to eliminate the discretion that has traditionally vested in the Attorney General.

There is, however, one aspect of Question 8(b) that we find ripe for adjudication—the issue of the power of the Commission to issue advisory opinions pursuant to 2 U.S.C. § 437f. Upon written request by an individual holding federal office, a candidate for federal office, or a political committee, the Commission is required to issue an advisory opinion with respect to whether the requesting party would violate FECA, Subtitle H, or the election law crimes codified in title 18, by engaging in a "specific transaction or activity." *Id.* § 437f(a). Moreover, a person who requests an advisory opinion is "presumed to be in compliance" with the statutory provisions that are the subject of the advisory opinion if he acts "in good faith in accordance with the provisions and findings" of the opinion. *Id.* § 437(b).

Our initial problem with this issue is that on reading the certified questions it is not at all clear to what extent the issue is before this court. Question 8(b) asks, in part, whether section 437d is unconstitutional in that it entrusts administration and enforcement of FECA to the Commission.[192] And one of the

192. 2 U.S.C. § 437d(a) provides:

§ 437d. Powers of Commission

(a) The Commission has the power—

(1) to require, by special or general orders, any person to submit in writing such reports and answers to questions as the Commission may prescribe; and such submission shall be made within such a reasonable period of time and under oath or otherwise as the Commission may determine;

(2) to administer oaths or affirmations;

(3) to require by subpena, signed by the chairman or the vice chairman, the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;

(4) in any proceeding or investigation, to order testimony to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection;

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States;

(6) to initiate (through civil proceedings for injunctive, declaratory, or other appropriate relief), defend, or appeal any civil action in the name of the Commission for the purpose of enforcing the provisions of this Act, through its general counsel;

(7) to render advisory opinions under section 437f of this title;

(8) to make, amend, and repeal such rules, pursuant to the provisions of chapter 5 of Title 5, United States Code, as are necessary to carry out the provisions of this Act;

(9) to formulate general policy with respect to the administration of this Act and sections 608, 610, 611, 613, 614, 615, 616, and 617 of Title 18, United States Code;

powers delegated to the Commission in section 437d is the power "to render advisory opinions under section 437f." [193] Unlike the situation with respect to the rulemaking and enforcement powers, however, no separate question has been certified to this court concerning section 437f.[194] Nevertheless, we have read Question 8(b) broadly and conclude that this issue is before us.

Although none of these plaintiffs has as yet been adversely affected by the grant of other powers to the Commission, the fact that the Commission is already exercising its power to issue advisory opinions [195] leads us to a different conclusion with respect to that issue. These plaintiffs are no longer completely free to forego the opportunity for an advisory opinion, since they may well conclude that a court will look unfavorably on someone who engages in questionable transactions or activities without first pursuing the clarification device provided by Congress. They may thus be placed in the position of either seeking an advisory opinion when they would prefer not to (perhaps because they believe thre is a tendency toward an adverse Commission determination that may be given considerable weight by the courts), or foregoing an activity or transaction that they would prefer to pursue. Consequently, there is a ripe controversy over whether the grant of the advisory opinion power to this legislative agency places plaintiffs in the position of being brought within the ambit of an agency

(10) to develop prescribed forms under subsection (a)(1) of this section;

(11) to conduct investigations and hearings expeditiously, to encourage voluntary compliance, and to report apparent violations to the appropriate law enforcement authorities.

193. *Id.* § 437f provides:

§ 437f. Advisory opinions

(a) Upon written request to the Commission by any individual holding Federal office, any candidate for Federal office, or any political committee, the Commission shall render an advisory opinion, in writing, within a reasonable time with respect to whether any specific transaction or activity by such individual, candidate, or political committee would constitute a violation of this act, of chapter 95 or chapter 96 of Title 26 of the U.S. Code, or of section 608, 610, 611, 613, 614, 615, 616, or 617 of Title 18, United States Code.

(b) Notwithstanding any other provision of law, any person with respect to whom an advisory opinion is rendered under subsection (a) who acts in good faith in accordance with the provisions and findings of such advisory opinion shall be presumed to be in compliance with the provision of this act, of chapter 95 or chapter 96 of Title 26 of the U.S. Code, or of section 608, 610, 611, 613, 614, 615, 616, or 617 of Title 18, United States Code, with respect to which such advisory opinion is rendered.

(c) Any request made under subsection (a) shall be made public by the Commission. The Commission shall, before rendering an advisory opinion with respect to such request, provide any interested party with an opportunity to transmit written comments to the Commission with respect to such request.

194. *Compare id.* § 437d(a)(6) ("to initiate . . . defend, or appeal any civil action in the name of the Commission for the purpose of enforcing the provision of this Act . . .") *with* Question 8(c), note 183 *supra*. *Compare* 2 U.S.C. § 437d(a)(8) ("to make, amend, and repeal such rules . . . as are necessary to carry out the provisions of this Act") *with* Question 8(d), note 183 *supra*.

195. *See* Advisory Opinion AO 1975-1: National Political Party Conventions, 40 Fed.Reg. 29792 (July 15, 1975); Advisory Opinion AO 1975-4: Democratic National Committee (Democratic Party Telethon), *id.* at 29793.

appointed in violation of the doctrine of separation of powers.

Plaintiffs have offered this court little reason, if any, to conclude that the advisory opinion power is unconstitutional. In their brief to this court, plaintiffs asserted that the power to issue advisory opinions is an executive function and consequently requires appointment of the Commission by the President.[196] In oral argument, on the other hand, plaintiffs suggested that the power to issue advisory opinions was a quasi-judicial function, thus also requiring Presidential appointment.[197]

But as we noted above, labelling particular functions as "executive" or "judicial" is the beginning rather than the end of the inquiry into whether the function is an appropriate one for a legislative agency. We discern no general constitutional barrier that would prevent a legislative agency from informing the public as to its interpretation of the statutory provision it must administer. In general, indeed, disclosure to the public of how a statute pertaining to election campaigns will be administered is viewed as wholesome, and in any event naturally related to the function of administration. The fact that advisory opinions are usually issued in connection with executive functions, or quasi-judicial functions, does not assign this technique exclusively to the executive or judicial branch.

Judge MacKinnon raises a more substantial separation of powers issue concerning the advisory opinion power when he argues that the power to issue advisory opinions is on its face an "impermissible intrusion into the constitutionally conferred powers and duties of the executive branch," for the reason that the presumption of compliance provision creates a situation in which the opinions of the Commission "effectively override the decisions of Government prosecutors interpreting the criminal statutes." Slip opinion page 1620 *infra*. The thrust of this argument seems to be that giving a "presumed to be in compliance" effect to advisory opinions forecloses the exercise of executive functions by immunizing certain transactions and activities from criminal prosecution.

A court faced with the question of what effect to give to an advisory opinion would no doubt turn to the legislative history for guidance in interpreting the rather ambiguous language in 2 U.S.C. § 437f(b). It would seem that Judge MacKinnon's construction is contrary to a statement in the House Report on the final House bill: "The presumption of compliance for those who rely in good faith on an advisory opinion stops short of outright immunization against civil or criminal penalties. Instead, the bill provides for a presumption of compliance; this presumption would be rebuttable, and, therefore, legal action would not be foreclosed." *H.R.Rep.* 93-1239, 93d Cong., 2d Sess. 9 (1974).

We do not pursue this point to a ruling, for we are not convinced that this particular aspect of the advisory opinion issue is ripe for adjudication. When a person who relied in good faith on an advisory opinion seeks to assert that good faith reliance as a defense to a civil suit or a criminal prosecution, the issue of the effect to be given to an advisory opinion can be raised and fully considered by the courts.

We therefore conclude that the Commission has the power as a legislative

196. Brief at 259; Reply Brief at 104, 108.

197. Transcript of Oral Argument at 139.

agency to issue advisory opinions. We find unripe for adjudication the remainder of Question 8(b) [challenging the administrative and enforcement provisions of 2 U.S.C. §§ 437d, 437g]; Question 8(c) [challenging the Commission's power under *id.* § 437g(a) to institute civil actions to obtain compliance with FECA]; Question 8(d) [challenging the Commission's rulemaking power under *id.* § 438(c)]; and Question 8(e) [challenging the Commission's power to impose temporary candidate disqualification under *id.* § 456].

We do, however, find it necessary to reach the issues raised by Question 8(f),[198] which deals with the power of the Commission under § 9008(d)(3) of Subtitle H [199] to authorize Presidential nominating convention expenditures in excess of the $2 million limit established by §§ 9008(b)(1), (d)(1), (2). Plaintiffs challenge § 9008(d)(3) not on the ground that it is an executive or judicial function that cannot be exercised by a legislative agency, but rather that it vests excessive discretion in the Commission. Our reason for finding Questions 8(c) through 8(e) and most of Question 8(b) unripe—the failure of the plaintiffs to present a concrete set of facts in which the court could analyze the nexus between each specific power and the exercise of legislative functions—is therefore inapplicable to Question 8(f).

In light of our earlier analysis concerning the constitutionality of the statutory limitation on total Presidential nominating convention expenditures,[200] we think Congress could only have intended § 9008(d)(3) to enable the Commission to authorize additional convention expenditure where, due to extraordinary and unforeseen circumstances (for example, emergency conditions that warrant the use of special equipment, conditions that require special measures to protect convention participants, strikes, etc.), the national committee is unable to provide the services actually needed to run the convention without exceeding the statutory limit. So construed, we find that § 9008(d)(3) provides the Commission with sufficient guidelines to withstand a constitutional challenge of vagueness. We therefore answer Question 8(f) in the negative.

VIII. *Remaining Questions*

Certified Question 9 [201] seeks this court's determination whether nearly thirty named provisions of the challenged Acts are void for vagueness. We have already held, in Part V–B of this opinion, that 2 U.S.C. § 437a is unconstitutional for overbreadth and vagueness.

198. 8(f) Does § 9008 of the Internal Revenue Code of 1954 violate such rights, in that it empowers the Federal Election Commission to authorize expenditures of the national committee of a party with respect to presidential nominating conventions in excess of the limits enumerated therein?

199. § 9008(d)(3) of Subtitle H provides:

> The Commission may authorize the national committee of a major party or minor party to make expenditures which, in the aggregate, exceed the limitation established by paragraph (1) or paragraph (2) of this subsection. Such authorization shall be based upon a determination by the Commission that, due to extraordinary and unforeseen circumstances, such expenditures are necessary to assure the effective operation of the presidential nominating convention by such committee.

200. *See* slip opinion pages 1534–1536 *supra*.

201. 9. Do 2 U.S.C. §§ 431(b), (d), (e), and (f); 434(e); 437a, 437d, 437g(5)–(7), and 456; 18 U.S.C. §§ 591 (b), (d), (e) and (f); 608(b)(6), (c)(4), (e); Internal Revenue Code of 1954 §§ 9002(2), and (9); 9006(d); 9008(d)(3); 9032(2), (4), (8), and (9), and 9037 violate the constitutional rights of one or more of the plaintiffs in that they are excessively vague?

With respect to many other of the provisions discussed in our foregoing opinion, we answer Question 9 in the negative.[202] We deem unripe for resolution at this time all remaining provisions challenged in Question 9,[203] and commend the parties to the Commission, calling their attention to 2 U.S.C. § 437f.[204] which delegates to the Commission the power to render advisory opinions with respect to whether a "specific transaction or activity by [an] individual, candidate, or political committee" would constitute a violation of FECA, Subtitle H, or the criminal sections.[205]

Conclusion

Our democracy has moved a long way from the town hall, one man, one vote conception of the framers. Politics has become a growth industry and a way of life for millions of Americans. The corrosive influence of money blights our democratic processes. We have not been sufficiently vigilant; we have failed to remind ourselves, as we moved from the town halls to today's quadrennial Romanesque political extravagances, that politics is neither an end in itself nor a means for subverting the will of the people. The excesses revealed by this record—the campaign spending, the use to which the money is put in some instances, the campaign funding, the *quid pro quo* for the contributions—support the legislative judgment that the situation not only must not be allowed to deteriorate further, but that the present situation cannot be tolerated by a government that professes to be a de-

202. The provisions as to which we specifically find no vagueness are 2 U.S.C. §§ 431(b), (d), (e) and (f); 434(e); 437d(a)(7); 18 U.S.C. §§ 591(b), (d), (e) and (f), 608(b)(6), (c)(4), (e); 26 U.S.C. §§ 9002(2), 9008(d)(3), 9032(2), and (4).

203. The provisions the vagueness of which we deem unripe for resolution at this time are: 2 U.S.C. §§ 437d(a)(1)–(6), (8)–(11), and (b)–(d), 437g(5)–(7), 456; 26 U.S.C. §§ 9002(9), 9006(d), 9032(8), and (9), 9037.

204. The text of 2 U.S.C. § 437f is reprinted in full at note 193 supra. We have already held above that the grant of this advisory opinion power to the Commission is constitutional. See slip opinion at pages 171–75 supra.

205. In addition, the following three questions certified to this court ask whether the challenged statutes violate the Bill of Rights in providing that the government may bring criminal prosecutions against anyone who violates or is about to violate various sections of those statutes. Although there is nothing in the record to indicate that criminal prosecution is in any way imminent, and realizing that our test for ripeness does not require that such prosecution be imminent to test the provisions of statute addressed above, we must reach and answer negatively the implication of these questions that Congress does not have the power to impose criminal penalties for clear violation of the election laws. Challenge to the claimed "about to violate" powers of government is unripe and can only be addressed in a case with a more developed record on that issue.

> 3(i) Do 18 U.S.C. § 608 and § 9012 of the Internal Revenue Code of 1954 violate such rights [under the First, Fifth and Ninth Amendments and the Due Process Clause of the Fifth Amendment], in that they provide that the government may bring criminal prosecutions against anyone who violates or is about to violate the provisions recited in those sections?
>
> 4(b) Do 18 U.S.C. § 608 and § 9012 of the Internal Revenue Code of 1954 violate such rights [under the First and Ninth Amendments and the Due Process Clause of the Fifth Amendment], in that they provide that the government may bring criminal prosecutions against anyone who violates or is about to violate the provisions recited in those sections?
>
> 7(f) Does 2 U.S.C. § 441 violate such rights [under the First, Fourth and Ninth Amendments and the Due Process Clause of the Fifth Amendment], in that it provides criminal penalties for violations of Chapter 14 of Title 2, U.S.C.?

mocracy. The legislative branch, with the concurrence of the executive, has decided in this legislation that the time for corrective action, effective action, is now. What the Congress has prescribed, and the President has approved, may well be not enough. Lesser measures, taken since 1910, have failed. But these latest efforts on the part of our government to cleanse its democratic processes should at least be given a chance to prove themselves. Certainly they should not be rejected because they might have some incidental, not clearly defined, effect on First Amendment freedoms. To do so might be Aesopian in the sense of the dog losing his bone going after its deceptively larger reflection in the water.

APPENDIX A

[THE ORDER OF THIS COURT]

Before BAZELON, Chief Judge and WRIGHT, McGOWAN, TAMM, LEVENTHAL, ROBINSON, MacKINNON and WILKEY, Circuit Judges.

ORDER

Pursuant to 2 U.S.C. § 437h(a), constitutional questions have been certified to this Court with respect to the Federal Election Campaign Act, as amended, and with respect to the criminal sections of Title 18 enumerated within the review provision. This case came before the Court sitting *en banc* to consider those questions certified by the District Court. After studying the record and the briefs of the parties and of *amicus curiae*, and after considering the arguments presented to the Court by learned counsel, it is hereby

Ordered by the Court, for the reasons stated in the accompanying opinion, that the certified constitutional questions be answered as follows:

CONSTITUTIONAL QUESTIONS

1. Does the first sentence of § 315(a) of the Federal Election Campaign Act, *as amended*, 2 U.S.C. § 437h(a), in the context of this action, require courts of the United States to render advisory opinions in violation of the "case or controversy" requirement of Article III, § 2, of the Constitution of the United States?

Answer: NO

2. Has each of the plaintiffs alleged sufficient injury to his constitutional rights enumerated in the following questions to create a constitutional "case or controversy" within the judicial power under Article III?

Answer: YES, SUBJECT TO CONSIDERATIONS OF RIPENESS

3. Does any statutory limitation, or do the particular limitations in the challenged statutes, on the amounts that individuals or organizations may contribute or expend in connection with elections for federal office violate the rights of one or more of the plaintiffs under the First, Fifth, or Ninth Amendment or the Due Process Clause of the Fifth Amendment of the Constitution of the United States?

(a) Does 18 U.S.C. § 608(a) violate such rights, in that it forbids a candidate or the members of his immediate family from expending personal funds in excess of the amounts specified in 18 U.S.C. § 608(a)(1)? (First Amended Complaint (FAC) * ¶¶ 56, 59, 60, 61, 62, 86, 87, 88.)

Answer: NO

(b) Does 18 U.S.C. § 608(b) violate such rights, in that it forbids the solicitation, receipt or making of contributions on behalf of political candidates in excess of the amounts specified in 18 U.S.C. § 608(b)? (FAC ¶¶ 55, 59, 60, 61, 62, 86, 87, 88.)

Answer: NO

(c) Do 18 U.S.C. §§ 591(e) and 608(b) violate such rights, in that they limit the incidental expenses which volunteers working on behalf of political candidates may incur to the amounts specified in 18 U.S.C. §§ 591(e) and 608(b)? (FAC ¶¶ 57, 59, 60, 61, 62, 86, 87, 88.)

Answer: NO

(d) Does 18 U.S.C. § 608(e) violate such rights, in that it limits to $1,000 the independent (not on behalf of a candidate) expenditures of any person relative to an identified candidate? (FAC ¶¶ 59, 60, 61, 62, 76, 86, 87, 88.)

Answer: NO

(e) Does 18 U.S.C. § 608(f) violate such rights, in that it limits the expenditures of national or state committees of political parties in connection with general election campaigns for federal office? (FAC ¶¶ 59, 60, 61, 62, 63, 64, 65, 86, 87, 88.)

Answer: NO

(f) Does § 9008 of the Internal Revenue Code of 1954 violate such rights, in that it limits the expenditures of the national committee of a party with respect to presidential nominating conventions? (FAC ¶¶ 59, 60, 61, 62, 63, 64, 65, 86.)

Answer: NO

(g) Do 2 U.S.C. § 431(e) and (f) and 18 U.S.C. § 591(e) and (f) violate such rights, in that they exempt news stories, commentaries, and editorials from the statutory definitions of "expenditure" but not from the statutory definitions of "contribution?" (FAC ¶¶ 84, 86, 87, 88.)

Answer: NO

(h) Does 18 U.S.C. § 608(b)(2) violate such rights, in that it excludes from the definition of "political committee" committees registered for less than the period of time prescribed in the statute? (FAC ¶¶ 59, 60, 61, 62, 77, 86, 87, 88.)

Answer: NO

(i) Do 18 U.S.C. § 608 and § 9012 of the Internal Revenue Code of 1954 violate such rights, in that they provide that the government may bring criminal prosecutions against anyone who violates or is about to violate the provisions recited in those sections? (FAC ¶¶ 78, 86, 87, 88.)

Answer: UNRIPE FOR RESOLUTION

4. Does any statutory limitation, or do the particular limitations in the challenged statutes, on the amounts that candidates for elected federal office may expend in their campaigns violate the rights of one or more of the plaintiffs under the First or Ninth Amendment or the Due Process Clause of the Fifth Amendment?

(a) Does 18 U.S.C. § 608(c) violate such rights, in that it forbids expenditures by candidates for federal office in excess of the amounts specified in 18 U.S.C. § 608(c)? (FAC ¶¶ 58, 59, 60, 61, 62, 86, 87, 88.)

Answer: NO

(b) Do 18 U.S.C. § 608 and § 9012 of the Internal Revenue Code of 1954 violate such rights, in that they provide that the government may bring criminal prosecutions against anyone who violates or is about to violate the provisions recited in those sections? (FAC ¶¶ 78, 86, 87, 88.)

* FAC is the trial court's abbreviation for First Amended Complaint.

Answer: UNRIPE FOR RESOLUTION

5. Does any statutory provision for the public financing of political conventions or campaigns for nomination or election to the Presidency or Vice Presidency violate the rights of one or more of the plaintiffs under the First or Ninth Amendment, the Due Process Clause of the Fifth Amendment, or Article I, Section 8, Clause 1, of the Constitution of the United States? (FAC ¶¶ 79, 80, 81, 82, 86, 87, 88.)

Answer: NO

6. Do the particular provisions of Subtitle H and § 6096 of the Internal Revenue Code of 1954 deprive one or more of the plaintiffs of such rights under the First or Ninth Amendment or Article I, Section 8, Clause 1, in that they provide federal tax money to support certain political candidates, parties, movements, and organizations or in the manner that they so provide such federal tax money? (FAC ¶¶ 79, 80, 81, 82, 86, 87, 88.)

Answer: NO

7. Do the particular requirements in the challenged statutes that persons disclose the amounts that they contribute or expend in connection with elections for federal office or that candidates for such office disclose the amounts that they expend in their campaigns violate the rights of one or more of the plaintiffs under the First, Fourth, or Ninth Amendment or the Due Process Clause of the Fifth Amendment?

(a) Do 2 U.S.C. § 432(b), (c), and (d) and 438(a)(8) violate such rights, in that they provide, through auditing procedures, for the Federal Election Commission to inspect lists and records required to be kept by political committees of individuals who contribute more than $10? (FAC ¶¶ 70, 86, 87, 88.)

Answer: UNRIPE FOR RESOLUTION

(b) Does 2 U.S.C. § 434(b)(1)–(8) violate such rights, in that it requires political committees to register and disclose the names, occupations, and principal places of business (if any) of those of their contributors who contribute in excess of $100? (FAC ¶¶ 71, 86, 87, 88.)

Answer: NO

(c) Does 2 U.S.C. § 434(d) violate such rights in that it neither requires disclosure of nor treats as contribution to or expenditure by incumbent officeholders the resources enumerated in 2 U.S.C. § 434(d)? (FAC ¶¶ 72, 86, 87, 88.)

Answer: NO

(d) Does 2 U.S.C. § 434(e) violate such rights, in that it provides that every person contributing or expending more than $100 other than by contribution to a political committee or candidate (including volunteers with incidental expenses in excess of $600) must make disclosure to the Federal Election Commission? (FAC ¶¶ 73, 86, 87, 88.)

Answer: NO

(e) Does 2 U.S.C. § 437a violate such rights, in that it requires any person who expends funds or commits any act for the purpose of influencing the outcome of an election or who publishes or broadcasts to the public any material advocating the election or defeat of a candidate, setting forth a candidate's position on any public issue, his voting record, or any official acts to file reports with the Commission as if such person were a political committee? (FAC ¶¶ 74, 86, 87, 88.)

Answer: YES

(f) Does 2 U.S.C. § 441 violate such rights, in that it provides criminal penalties for violations of Chapter 14 of Title 2 U.S.C.? (FAC ¶¶ 75, 86, 87, 88.)

Answer: UNRIPE FOR RESOLUTION

8. Do the provisions in the challenged statutes concerning the powers and method of appointment of the Federal Election Commission violate the rights of one or more of the plaintiffs under the constitutional separation of powers, the First, Fourth, Fifth, Sixth, or Ninth Amendment, Article I, Section 2, Clause 6, Article I, Section 5, Clause 1, or Article III?

(a) Does 2 U.S.C. § 437c(a) violate such rights by the method of appointment of the Federal Election Commission? (FAC ¶¶ 66, 86, 87, 88.)

Answer: NO

(b) Do 2 U.S.C. §§ 437d and 437g violate such rights, in that they entrust administration and enforcement of the FECA to the Federal Election Commission? (FAC ¶¶ 67, 86, 87, 88.)

Answer: NO as to the power to issue advisory opinions; UNRIPE as to all else.

(c) Does 2 U.S.C. § 467g(a) violate such rights, in that it empowers the Federal Election Commission and the Attorney General to bring civil actions (including proceedings for injunctions) against any person who has engaged or who may engage in acts or practices which violate the Federal Election Campaign Act, *as amended*, or §§ 608, 610, 611, 613, 614, 615, 616, or 617 of Title 18? (FAC ¶¶ 83, 86, 87, 88.)

Answer: UNRIPE FOR RESOLUTION

(d) Does 2 U.S.C. § 438(c) violate such rights, in that it empowers the Federal Election Commission to make rules under the FECA in the manner specified therein? (FAC ¶¶ 68, 86, 87, 88.)

Answer: UNRIPE FOR RESOLUTION

(e) Does 2 U.S.C. § 456 violate such rights, in that it imposes a temporary disqualification on any candidate for election to federal office who is found by the Federal Election Commission to have failed to file a report required by Title III of the Federal Election Campaign Act, *as amended*? (FAC ¶¶ 69, 86, 87, 88.)

Answer: UNRIPE FOR RESOLUTION

(f) Does § 9008 of the Internal Revenue Code of 1954 violate such rights, in that it empowers the Federal Election Commission to authorize expenditures of the national committee of a party with respect to presidential nominating conventions in excess of the limits enumerated therein? (FAC ¶¶ 59, 60, 61, 62, 63, 64, 65, 86.)

Answer: NO

9. Do 2 U.S.C. §§ 431(b), (d), (e) and (f); 434(e); 437a, 437d, 437g(5)–(7), and 456; 18 U.S.C. §§ 591(b), (d), (e) and (f); 608(b)(6), (c)(4), (e); Internal Revenue Code of 1954 §§ 9002(2), (9); 9006(d); 9008(d)(3); 9032(2), (4), (8), and (9), and 9037 violate the constitutional rights of one or more of the plaintiffs in that they are excessively vague? (FAC ¶¶ 85, 87, 88.)

Answer: YES as to 2 U.S.C. § 437a

NO as to 2 U.S.C. §§ 431(b), (d), (e) and (f); 434(e); 437d(a)(7); 18 U.S.C. §§ 591(b), (d), (e) and (f), 608(b)(6), (c)(4), (e); 26 U.S.C.

§§ 9002(2), 9008(d)(3), 9032(2) and (4)

UNRIPE FOR RESOLUTION as to 2 U.S.C. §§ 437d(a)(1)–(6), (8)–(11), and (b)–(d), 437g(5)–(7), 456, 26 U.S.C. §§ 9002(9), 9006(d), 9032(8) and (9), 9037.

APPENDIX B

History Of This Litigation

This lawsuit was filed in the District Court on January 2, 1975, the first business day after the FECA Amendments of 1974 went into effect. The case was assigned to District Judge Corcoran. Plaintiffs sought declaratory and injunctive relief, bottoming jurisdiction upon 28 U.S.C. §§ 1331, 2201, 2202 and Section 315(a) of FECA, codified as 2 U.S.C. § 437h, added by section 208 of the Amendments of 1974.

The plaintiffs requested convocation of a three-judge District Court *as to all matters* pursuant to 28 U.S.C. §§ 2282, 2284, and also requested certification to this Court under § 437h. Plaintiffs moved the District Court to reduce defendants' answering time from 60 to 30 days. On January 16th the defendants opposed the motion for a three-judge court, and mooted the request for reduction in answering time by moving to dismiss the complaint on grounds of lack of subject matter jurisdiction because of premature and nonjusticiable issues and the absence of an indispensable and necessary party, the Federal Election Commission [Commission or FEC]. On January 24th, Judge Corcoran entered an order denying the plaintiffs' application for a three-judge court, and directing the Clerk of the District Court to transmit the entire file to the Clerk of this Court. He bottomed his transmittal action upon a reading together of § 437h and 26 U.S.C. 9011(b),[1] (the review provision contained within Chapter 95 of Subtitle H). On that same date, all of the papers in the case were entered upon this Court's regular docket as our No. 75–1061. Plaintiffs filed their opposition to the motion to dismiss in this Court along with an explanation of their actions. Subsequent thereto, federal defendants joined with applicants for intervention (now the intervening defendants) to move remand of the instant case to the District Court.

On February 19, 1975, this Court entered an order preliminarily deeming the case to be properly certified here under § 437h and declaring that it would be considered *en banc*.[2] Further, the Clerk

1. 26 U.S.C. § 9011 provides:

(b) *Suits to implement chapter.*——

(1) The Commission, the national committee of any political party, and individuals eligible to vote for President are authorized to institute such actions, including actions for declaratory judgment or injunctive relief, as may be appropriate to implement or contrue [sic] any provision of this chapter.

(2) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this subsection and shall exercise the same without regard to whether a person asserting rights under provisions of this subsection shall have exhausted any administrative or other remedies that may be provided at law. Such proceedings shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28, United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

2. The Court took care in that initial order to base its decision to hear the case *en banc* upon Rule 35(a) of the Federal Rules of Appellate Procedure and upon the statutory enactment of long-standing judicial custom, 28 U.S.C. § 46(c), so as not to foreclose later argument under separation of powers that Congress may not compel a sitting *en banc*, as the plain words of § 437h would imply.

was ordered to inquire of the parties by letter as to their needs and intentions regarding submission of evidence and establishment of procedures to evaluate it, and the parties were ordered to file within a court-determined schedule additional briefs or memoranda on the jurisdictional questions.

While this matter was on our docket we granted a motion for leave to intervene on behalf of the Center for Public Financing of Elections, Common Cause, The League of Women Voters of the United States, and eight individuals in leadership positions with those organizations. Other motions for leave to intervene and to appear *amicus curiae* were held in abeyance.

At the urging of the parties in response to our Clerk's letters that this Court establish fact-finding procedures without waiting for the decision upon the motions to remand and to dismiss, it was ordered *en banc* on March 14th that the parties file proposed findings of fact and in conjunction with each proposed finding a documented offer of proof to consist of evidence in tangible form. This first round of material was due on April 3rd, with a responsive filing admitting or denying by similar documented offer due on April 18th. The March 14th order also set oral argument on the motions for April 2nd.

Defendants and intervening defendants then served plaintiffs with notices to take deposition upon oral examination, interrogatories, requests for admission, and for production of documents. The plaintiffs indicated to the Court, first by informal letter which was not accepted for filing, and then later as a Preliminary Response to defendants' discovery filings, that they thought discovery procedures were outside the intendment of this Court's March 14 evidentiary order, and not compelled by the Federal Rules of Civil Procedure, since by their terms the Rules apply to the District Court. On the day prior to argument the plaintiffs moved this Court for a procedural order setting forth a schedule for filing of summary judgment motions. Defendants moved to compel discovery. At the April 2nd oral argument upon the motions, all parties discussed whether such discovery was within or without the scope of this Court's March 14th order. The first round of evidentiary filings was completed on April 4th, and it was extensive. Defendants and intervening defendants continued to attempt discovery and filed copies of their demands in this Court.

On April 14th this Court entered an *en banc* order (Chief Judge Bazelon dissenting), granting the motion to remand to the extent of remanding the record to Judge Corcoran to do the following:

1. Identify constitutional issues in the complaint.
2. Take whatever may be necessary in the form of evidence—over and above submissions that may be suitably handled through judicial notice, as of legislative facts, supported by legislative history or works reasonably available, to the extent not controverted in material and substantial degree.
3. Make findings of fact with reference to those issues.
4. Certify to this Court constitutional questions arising from steps 1, 2, and 3.

Memorandum at 1(April 14, 1975).

The remand order also provided that the second round of evidentiary filings, due April 18th, would be referred to Judge Corcoran. The District Court was ordered to return the augmented record to this Court no later than May 19, 1975.

On April 15th, Judge Corcoran, pursuant to the suggestion of the *en banc* order notified the Chief Judge of the request for convening of a three-judge court to deal with the Subtitle H issues.[3] On the same day, Chief Judge Bazelon designated himself, Judge Robinson and Judge Corcoran to constitute that court. At an April 16th status call, Judge Corcoran postponed the second round of evidentiary findings from April 18th to April 21, and granted the motion of James C. Calaway to intervene as a party plaintiff (Calaway's motion made to this Court was then still pending). The District Court endorsed discovery proceedings but ordered them expedited. On April 21, the parties filed their second round of proposed findings of fact in this Court and they were referred to Judge Corcoran. The District Court also granted leave to Senator Lee Metcalf to file a brief *amicus curiae* and to participate in oral argument (Metcalf's motion made to this Court was then still pending). On April 23rd, the parties filed proposed constitutional questions, and intervening plaintiff Calaway's complaint was filed. On April 28, papers responsive to the first round of proposed constitutional questions were filed. Additional discovery filings occurred during the first week of May. On May 14th the General Counsel for the Federal Elections Commission was served with the First Amended Complaint by plaintiffs. On that same day Judge Corcoran granted the motion for substitution of Louise D. Wides as intervening defendant for Susan B. King.

On May 19th, Judge Corcoran entered a memorandum and order transmitting the augmented record back to this Court, and adopting extensive findings of fact. That document is in four parts: Part I: Findings of Fact Agreed to by the Parties; Part II: Statistical Findings of Fact: Part III: Court Findings of Fact; Part IV: The Constitutional Questions, certified by the District Court.

While this case was on remand of the record, this Court *sua sponte* entered an order setting a briefing schedule to be triggered by the return of remand. It provided that opening briefs were due fourteen days after return of the record (in fact, June 2) and reply briefs to be due ten days thereafter (June 12).

3. This Court suggested, Memorandum 2–3(April 14, 1975):

> Certain of the parties have questioned whether Subtitle H of the Internal Revenue Code (the public financing of presidential elections provisions) is subject to the procedures of Section 315(a). They cite 26 U.S.C. § 9011(b), which by its plain words commands a different review procedure—the convening of a three-judge court—for review of Chapter 95 of Subtitle H. It is the view of the other parties that the review provisions set forth in Section 315(a) are sufficiently broad that *all* constitutional questions must be certified to this court.
>
> To protect against the contingency that the Supreme Court might eventually hold that these issues should be decided by a three-judge court, either under 26 U.S.C. § 9011(b) or as to Chapter 96 under 28 U.S.C. §§ 2282, 2284, we suggest to the District Court that it certify the need for a three-judge court as to Subtitle H to the Chief Judge of this Circuit, in order that there may be parallel proceedings in that court and in this court with reference thereto.

On May 23rd, after return of the record, the United States filed a motion for leave to file a brief *amicus curiae* in excess of the page limits. That motion was later withdrawn. On May 28th a *per curiam* order was entered *sua sponte* setting a joint sitting with the three-judge district court for June 13th at 9:30 a. m. On May 29th the Court entered an order to grant the pending motions of James C. Calaway for leave to intervene, and of Senator Lee Metcalf for leave to file a brief *amicus curiae* and to participate in oral argument, and for the Clerk to modify the docket to reflect those changes. Intervening plaintiff Calaway's complaint was then filed.

On June 13th, a *per curiam* order was entered granting *amicus curiae* ten minutes time at oral argument not be be subtracted from the time of the other parties, after parties could not agree on a division of time. The case was then argued to both courts sitting jointly for purposes of argument only, consideration of the three-judge district court being limited to the Subchapter H issues.

APPENDIX C

Brief History of Federal Election Regulation

The primary source of Congressional authority to regulate Federal elections is found in article I, section 4 of the Constitution, which provides:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Place of chusing Senators.

This grant of authority does not refer in terms to regulation of Presidential elections. In fact, it has been held that in the absence of direct election, a Presidential elector is a state officer, not a federal one. In re *Green*, 134 U.S. 377, 379 (1890). More recently, in the case of *Burroughs and Cannon v. United States*, 290 U.S. 534 (1934), it was held that the federal interest in the existence of the Presidency is such that, because the states could theoretically refuse to provide for selection of electors, the federal government must have regulatory powers implicit in article II. In *United States v. Manning*, 215 F.Supp. 272, 284 (D.C.La.1963), the court held that the phrase "manner of holding elections" refers to the entire electoral process, from the first step of registering to the last step of promulgating honest returns.

The modern era of federal campaign regulation may be reckoned from 1907, when President Roosevelt urged adoption of a system of public financing. Although Congress did not adopt that proposal, it did enact in that same year the Tillman Act, ch. 420, 34 Stat. 864, which is the predecessor of present day 18 U.S.C. § 610. That statute prohibited national banks and corporations *chartered by Congress* from making political contributions in *any* election, and prohibited *all* corporations from making political contributions in connection with elections for *federal* office. "As the historical background of this statute indicates, its aim was not merely to prevent the subversion of the integrity of the electoral process. Its underlying philosophy was to sustain the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government." *United States v. UAW*, 352 U.S. 567, 575 (1957).

In 1909, Congress attempted but failed to broaden the Act's coverage to include

contributions of all items of value (in-kind contributions) and state legislative races. 1910 saw the first federal disclosure law, Act of June 25, 1910, ch. 392, §§ 5–6, 36 Stat. 823, which required political committees (as defined therein) operating in Congressional elections in two or more states, to disclose all transactions above $100. Similarly, expenditures of greater than $50, made independently of a political committee, had to be reported. *Id.* § 7, 36 Stat. 824. The 1910 Act was amended in 1911 to include, for the first time, overall expenditure ceilings on campaigns for the House ($5,000) and for the Senate ($10,000), and detailed reporting requirements. Act of Aug. 19, 1911, ch. 33, § 2, 37 Stat. 26. That revision also broadened disclosure to include primary, convention and other pre-nomination periods. *Id.* In 1918, Congress added criminal penalties for offering money to influence voting. Act of Oct. 16, 1918, ch. 187, 40 Stat. 1013. In 1921, in the only instance of a criminal prosecution under this act and its successor statute, Truman Newberry was convicted of violating the expenditure ceiling in his 1918 Michigan Senate primary race. His conviction was reversed and the primary provisions of the Act were overturned as unconstitutional by the Supreme Court because primaries were intra-party affairs, and Congress could not limit expenses therein under article 1, section 4. *Newberry v. United States*, 256 U.S. 232 (1921).

After *Newberry*, the Congress acted to draw together in 1925 the surviving provisions of federal election law, generally broadening disclosure. Federal Corrupt Practices Act of 1925, ch. 368, tit. III, 43 Stat. 1070. In 1934, in *Burroughs and Cannon, supra*, the Supreme Court upheld the Federal Corrupt Practices Act of 1925 in very broad language:

> If it can be seen that the means are really calculated to attain the end, the degree of their necessity, the extent to which they conduce to the end, the closeness of the relationship between the means adopted and the end to be attained, are matters for congressional determination alone. . . . Congress reached the conclusion that public disclosure of political contributions, together with the names of contributors and other details, would tend to prevent corrupt use of money to affect elections. The verity of this conclusion reasonably cannot be denied. . . . It seems plain that the statute as a whole is calculated to discourage the making and use of contributions for purposes of corruption.
>
> 290 U.S. at 547–548.

As indicated above, *Burroughs and Cannon* also stands for the proposition that the power of Congress to regulate elections extends to the selection of Presidential electors:

> The President is vested with the executive power of the nation. The importance of his election and the vital character of its relationship to and effect upon the welfare and safety of the whole people cannot be too strongly stated. To say that Congress is without power to pass appropriate legislation to safeguard such an election from the improper use of money to influence the result is to deny to the nation in a vital particular the power of self protection. Congress, undoubtedly, possesses that power, as it possesses every other power essential to preserve the departments and institutions of the general government from impairment or destruction, whether threatened by force or by corruption.
>
> 290 U.S. at 545.

In 1939–1940, Congress enacted the Hatch Act, the restrictions of which are far more stringent as applied to federal employees than are those of the challenged Acts as applied to the citizenry at large. Ch. 410, 53 Stat. 1147. That statute, which banned overt political activities by all federal employees save Presidential appointees, was upheld in *United Public Workers v. Mitchell*, 330 U.S. 75 (1947). In 1940, Congress also limited the total expenses of political committees to $3,000,000 and limited gifts to candidates or political committees to $5,000 in any calendar year. Act of July 19, 1940, ch. 640, 54 Stat. 767.[1]

In 1941, in *United States v. Classic*, 313 U.S. 299 (1941), the Supreme Court held that the regulatory powers of Congress did extend to the pre-election period. That case involved the Louisiana Democratic primary for House of Representatives, which custom and long history showed was, *de facto*, the determinant of who would occupy House seats. Without so stating, the *Classic* court overruled *Newberry*:

> [T]he authority of Congress, given by [article I,] § 4, includes the authority to regulate primary elections when, as in this case, they are a step in the exercise by the people of their choice of representatives in Congress.
>
> 313 U.S. at 317.

Labor unions were first brought within the Federal Corrupt Practices Act prohibition on contributions in 1943. War Labor Disputes Act (Smith-Connally Act), ch. 144, § 9, 57 Stat. 167. But since the War Labor Disputes Act contained an explicit termination clause, Congress found it necessary in the 1947 Taft-Hartley Act to enact another provision including labor unions within the ban on contributions. Labor Management Relations Act (Taft-Hartley Act) ch. 120, § 304, 61 Stat. 159. The Taft-Hartley Act also prohibited corporations and unions from making campaign expenditures, *id.*, thus closing the loophole which might have permitted both groups to influence the outcome of federal elections within the law merely by making purchases themselves (expenditures), rather than by contribution (the putting of resources within the control of a candidate or his agents). That Act also implemented *Classic* by broadening the federal statutes to include primary elections.

From the late 1940's through the end of the 1950's, various legislative bodies recommended changes in the Federal Corrupt Practices Act and the Hatch Act, including amendment of the dollar expenditure limits to reflect more realistic costs, but no action was taken. In 1960, the Senate approved a bill to toughen reporting requirements for both political committees and candidates, to adopt an individual contribution limit, to rationalize Congressional expenditure ceilings, and to place ceilings on Presidential campaigns. S. 106 *Cong.Rec.* 1193 (1960). The bill died for lack of a House companion.

President Kennedy's Presidential Commission on Campaign Costs recommended reform in 1962, favoring tax incentives and credits for small political contributions, realistic ceilings, and suspension of the equal time provision as to media debates. *President's Commission on Campaign Costs, Financing Presiden-*

1. Though these Acts spoke in terms of contributions and expenditures, the creation of additional committees prevented these provisions from serving as effective limitations or ceilings.

tial Campaigns (1962). In 1966, Congress first enacted a one dollar tax checkoff plan to provide public financing for presidential general elections, but the following year that plan was effectively repealed.

Late in 1971, Congress passed the annual Revenue Act which contained a revivified one dollar tax check-off to finance Presidential general elections. The following year the FECA of 1971, Pub.L.No.92–225, 86 Stat. 3, was signed into law, requiring disclosure of all contributions in excess of $100, disclosure of expenditures by all candidates and by political committees spending more than $1000 per year.

In 1973, the Supreme Court again examined the Hatch Act's restrictions upon the freedom of expression of federal employees, and again upheld it, in *United States Civil Service Commission v. National Association of Letter Carriers*, 413 U.S. 548. Vagueness and overbreath attacks on the Hatch Act were rejected:

> [T]he judgment of Congress, the Executive, and the country appears to have been that partisan political activities by federal employees must be limited if the Government is to operate effectively and fairly, elections are to play their proper part in representative government, and employees themselves are to be sufficiently free from improper influences . . . .
>
> . . . [That judgment] is sustainable by the obviously important interests sought to be served by the limitations on partisan political activities now contained in the Hatch Act.
>
> 413 U.S. at 564.

On October 15, 1974, President Ford signed into law the FECA Amendments of 1974, which enactment forms the majority of the statutes under challenge in this action.

This history of federal election law as accretion is included for two chief reasons: First, it indicates that the seeming ambiguities of the challenged statutes (such as the use of "contribution" and "expenditure" almost identically defined) are not the result of poor draftsmanship,[2] but in part the culmination of a loophole-closing process. Second, and more importantly, this history shows that most of the elements of regulation present in the existing, challenged Acts have been tried alone or in different combinations before, which bears upon the question whether Congress has regulated in as narrow a manner as possible. The statutes of 1910–1911 relied upon some disclosure, candidate expenditure ceilings and corporate donation prohibitions for primaries and general elections. The Federal Corrupt Practices Act of 1925 relied upon similar regulatory strategies but applied them to general elections only. The Taft-Hartley Act tightened labor donation bans and broadened the prohibition on corporate and labor contributions to include expenditures. The FECA of 1971 reacted to the regulatory failures of its predecessor Acts by repealing candidate expenditure ceilings, mandating fuller disclosure, and putting expenditure ceilings upon media advertising only, which was seen as the most unequal application of money. By separate Act, public financing of Presidential general elections was adopted (though delayed until 1976). In the 1974 Amendments, Congress abandoned media limits in favor of returning to candidate expenditure ceilings, added tight contribution limits, buttressed them with limitations on individual spending to endorse or oppose candidates, retained disclosure as a means of enforcing these other limits, and extended public financing to national party Presidential nominating conventions and to Presidential primaries.

Thus we have arrived at the comprehensiveness of the present Acts through the failure of piecemeal regulation to preserve the integrity of federal elections.

BAZELON, *Chief Judge* (concurring in part and dissenting in part):

This case involves the agonizing process of weighing competing values of the most fundamental importance in a democratic society: a statute designed to effectuate the one person one vote principle and to safeguard the integrity of elections *against* first amendment guarantees for candidates and voters. In general, I agree with the necessarily difficult accommodations reached by the court on all issues except for its holding that the disclosure requirements of § 434, when applied to minor parties,[1] are constitutional.[2]

It is common ground that the First Amendment protects the privacy of one's associations and beliefs.[3] Privacy is safeguarded first for its own sake, as a fundamental value of any society that respects the dignity of the individual.[4] But privacy is also protected as a means of achieving the "uninhibited, robust and

2. Poor draftsmanship does, in fact, exist. For example, 2 U.S.C. § 437h, the provision establishing review of constitutionality by certification to this court and appeal to the Supreme Court does not include among its list of reviewable criminal sections, 18 U.S.C. § 591, the section which sets forth the definitions underlying those sections which are deemed reviewable.

1. For present purposes, I accept the FECA's definition of "minor party" but would not distinguish between minor parties and new parties. Thus, by minor party I mean parties receiving less than 25% of the vote in the past election. *See* 26 U.S.C. § 9002(7), (8). For elections of Representatives, the determination could be made on a district or statewide basis.

   I do not mean to intimate, however, that the FECA's definition is constitutionally required. Congress might, for example, define as minor those parties not qualifying for automatic ballot access under state law, thereby incorporating the lower thresholds employed by the states. *See Developments in the Law—Elections*, 88 Harv.L.Rev. 1111, 1124 n.11 (1975). Alternatively, criteria such as present popularity, age or degree of organization might be used in some combination. The important point is that a line can be drawn separating major and minor parties so that small, controversial parties are not required to identify their contributors. *See id.* at 1250–51 & n.103.

   I am also troubled by the application of uniform contribution limits and expenditure ceilings to minor parties (or to unpopular or unknown candidates). Experience may demonstrate that greater latitude must be provided the minor parties if they are to function according to the constitutional scheme. There is not yet adequate evidence to decide this question. What evidence is available suggests that unlike disclosure of minor party contributors, *see* slip opinion p. 1594, — F.2d at — *infra*, contribution limits and expenditure ceilings pose no imminent threat to minor parties, *see* nn.30–31 *infra*. I am therefore prepared to postpone resolving the issues raised by limits and ceilings until more data is available.

2. I agree that the lesser threat of a chill or harassment, *see* slip opinion p. 1594, — F.2d at — *infra*, and the greater interests in disclosure, *see id.* at 1596–1597, justify requiring major parties to identify their contributors. By excising the unconstitutional applications, § 434 can be upheld. *Cf.* United States v. Harriss, 347 U.S. 612, 617–25 (1954); United States v. National Comm. for Impeachment, 469 F.2d 1135 (2d Cir. 1972).

3. *In re* Stolar, 401 U.S. 23 (1971); Baird v. State Bar, 401 U.S. 1 (1971); DeGregory v. New Hampshire Attorney General, 383 U.S. 825 (1966); Gibson v. Florida Legislative Investigation Comm., 372 U.S. 539 (1963); Shelton v. Tucker, 364 U.S. 479 (1960); Talley v. California, 362 U.S. 60 (1960); Bates v. Little Rock, 361 U.S. 516 (1960); NAACP v. Alabama *ex rel.* Patterson, 357 U.S. 449 (1958); Sweezy v. New Hampshire, 354 U.S. 234 (1957).

4. *See* Griswold v. Connecticut, 381 U.S. 479, 483 (1965); Sweezy v. New Hampshire, *supra* note 3 at 250 (1957). *See also* T. Emerson, The System of Freedom of Expression 31 (1970).

wide-open" debate to which the First Amendment commits us.[5] The First Amendment, after all, rests on the principle "that the best test of truth is the power of the thought to get itself accepted in the competition of the market." [6] And privacy is essential to the proper functioning of that market because dissidents and heretics, fearing harassment, may decline to speak if they must first publicly identify themselves.[7] As the Supreme Court has observed, "Persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all." [8]

Associational privacy is of particular importance to minor parties. Members of mainstream organizations such as the major parties have little to fear from being so identified.[9] But to be publicly labeled e. g., Socialist, Communist, or Nazi is to invite social ostracism, loss of business or employment, verbal or physical abuse, or worse. Fearing these consequences, many minor party adherents likely will be deterred from acting on their convictions. And given the fragile nature of many minor parties,[10] the loss of even a small portion of their support may well be fatal.[11]

The death of a significant number of minor parties would threaten the effective functioning of the two-party system. At an irreducible minimum, minor parties ensure a multitude of tongues in what should be the most democratic of all forums, the election. As the Supreme Court declared in *Williams v. Rhodes*, "There . . . is no reason why two parties should retain a permanent monopoly on the right to have people vote for or against them. Competition in ideas and governmental policies is at the core of our electoral process and of the First Amendment freedoms." [12] The American experience with minor parties has confirmed the value of that competition. In the oft-quoted words of Chief Justice Warren, "History has amply proved the virtue of political activity by minority, dissident groups who innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted." [13]

5. New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964).

6. Abrams v. United States, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting).

7. *See* cases cited note 3 *supra*. *See also* Robison, *Protection of Associations from Compulsory Disclosure of Membership*, 58 Colum.L. Rev. 614 (1958); Note, *The Constitutional Right to Anonymity: Free Speech, Disclosure and the Devil*, 70 Yale L.J. 1084 (1961).

8. Talley v. California, *supra* note 3, at 64.

9. This is all that is established by the experience of the State of Washington with disclosure, discussed in note 116 of the court's opinion.

10. *See* nn.29-31 *infra*.

11. *Developments*, *supra* note 1, at 1247; *see* Fleishman, *Freedom of Speech and Equality of Political Opportunity: The Constitutionality of the Federal Election Campaign Act of 1971*, 51 N.C.L.Rev. 389, 424 (1973); Redish, *Campaign Spending Laws and the First Amendment*, 46 N.Y.U.L.Rev. 900, 932 (1971). The court ignores the fragility of minor parties in suggesting that they could survive on contributions of under $100. At the very least, limiting minor parties to $100 contributions would impair their ability to compete, and would disadvantage them relative to major parties.

12. 393 U.S. 23, 32 (1968).

13. Sweezy v. New Hampshire, *supra* note 3, at 251. Even when minor parties have no effect on public policy, they still play a number of vital roles:

> [A]s an outlet for frustration, often as a creative force and a sort of conscience, as an ideological governor to keep major parties from speeding off into an abyss of mindlessness, and even just as a technique for strengthening a group's bargaining position for the future, the minor party would have to be invented if it did not come into existence regularly enough. It is an indispensable part of the system . . .

A. Bickel, Reform and Continuity 80 (1971).

When law intrudes on contributors' right to the privacy of their beliefs, and threatens to drastically affect dissident speakers, the command of the Constitution is clear: absent compelling governmental interests that can be furthered in no less restrictive manner, the law cannot stand.[14] The court today agrees in principle, and it purports to find such interests to sustain the disclosure requirements of § 434.[15] But the court concedes that these interests might not be deemed "compelling" were proof of harassment of contributors offered.[16] Implicitly, then, because of the state of the record the court applies less than the exacting scrutiny the Constitution demands.

Admittedly, the record of harassment and chill in this case is insubstantial, although representatives of the Committee for a Constitutional Presidency—McCarthy '76,[17] New York Conservative Party,[18] New York Libertarian Party,[19] National Libertarian Party,[20] and Mississippi Republican Party [21] all testified to knowing of at least one or two persons who refused to contribute because of disclosure requirements. But the weakness of the record did not prevent the court from invalidating the requirement that "issue-discussion groups"—which play much the same role as minor parties—identify their contributors.[22] Similarly, the absence of strong evidence with respect to minor parties should not vitiate the force of the compelling interest test.

One evil of disclosure—the invasion of the privacy of belief—requires no proof. The other evils—chill and harassment—are largely incapable of formal proof. Pre-existing minor parties might be able to link disclosure with a chill by demonstrating a sudden drop in contributions, but only if they could negate all other possible causes. New parties would not even have this option available, and would have to find a group of most unlikely witnesses: persons unwilling to publicize their contributions but nevertheless willing to publicize the reasons for their fears. Similarly, disclosure can be shown to produce reprisals only if (1) minor party members are willing to publicly announce their contributions; (2) those members suffer palpable injury; and (3) no other explanation for such injury is plausible. Even assuming that the causal links could eventually be established, many minor parties would wither and die on the vine awaiting the evidence required. The spectre of reputations blotted and lives ruined by the release of membership lists is still too vivid to claim ignorance of the danger

14. *See* cases cited note 3 *supra*. Disclosure laws are especially suspect because they discriminate according to the content of speakers' views, burdening only unpopular positions. Cf. Chicago Police Dept. v. Mosley, 408 U.S. 92 (1972).

15. — F.2d at — *supra*.

16. *Id.* at —. *See also* United States v. Finance Comm. to Re-elect the President, 507 F.2d 1194 (1974); Pichler v. Jennings, 347 F.Supp. 1061 (S.D.N.Y.1972).

17. McCarthy Dep. at 17-18, 67-70.

18. Buckley Dep. at 31.

19. Wertheimer Dep. at 31-33.

20. Crane Dep. at 38.

21. Reep Dep. at 16-17, 31-34, 69-70.

22. 2 U.S.C. § 437a, *discussed at* — F.2d —, *supra*.

disclosure poses. "All others see and understand this. How can we properly shut our minds to it?" [23]

Nothing in the Supreme Court precedents supports the majority's "wait-and-see" approach.[24] The Court has never varied the rigor of its scrutiny depending on the presence or absence of a record of harassment and chill.[25] Rather, whenever a disclosure requirement [26]—or any other law [27]—has posed a reasonable danger of chilling the exercise of First Amendment rights, the Court has applied its most exacting review.

When measured against the rigors of the compelling interest test, the application of § 434 to minor parties cannot be sustained. The court concludes that requiring disclosure is justified by the interests in "informing the electorate and preventing the corruption of the political process." [28] This interest assumes that the press will invest their scarce investigative resources and paper space (or air time) on the generally small lists of small contributors to minor parties. In truth, most minor parties probably are too small to attract press scrutiny in the heat of a campaign.[29] Furthermore, minor parties generally receive too little money [30]—and too few large contributions [31]—for their contributor lists to provide significant information. Finally, unlike the major parties, the views of minor party candidates are clearly defined, and their supporters share a basic ideological commitment.[32] Thus, information about the sources of support of minor parties is of minimal importance to those voters who would seriously consider voting for them.

The primary information the court suggests might be uncovered by requiring disclosure of minor party contributors—and the primary evil it suggests thereby might be deterred—is "stalking horses." [33] Although major party adherents may have always had an interest in diverting support from their principal rival, not a scintilla of evidence is offered to demonstrate that the stalking horse threat is a substantial one. Moreover, the stalking horse danger is only real if one assumes either that minor parties will accept large contributions without inquiring about the donors [34] or that they will knowingly allow themselves to be used to further the ends of a conspiracy of major party members.[35] To the extent the threat is serious and a proper concern of Congress, a less restrictive remedy for the objectionable acts would be to impose criminal sanctions.

In the end, the court requires minor parties to prove what is obvious but unprovable, while permitting the government to hypothesize interests which are little more than plausible. This approach stands First Amendment jurisprudence on its head. To justify infringing freedom of speech, a danger must be "present" or "imminent," not hypothetical.[36] The crucial issues at stake in this case call for strengthening, not relaxing, that requirement.

I respectfully dissent.

23. Child Labor Tax Case, 259 U.S. 20, 37 (1922).

24. The Court has held that a party seeking relief must establish that disclosure is being compelled; the mere possibility that it will be required in the future is insufficient to create a case or controversy. *See* California Bankers Ass'n v. Shultz, 416 U.S. 21, 55–57, 75–76 (1974); Laird v. Tatum, 408 U.S. 1 (1972); *cf.* United States v. Harriss, *supra* note 2, at 626 (possibility of persons remaining silent because of fear they will be deemed lobbyists and prosecuted for failure to disclose is insufficient to invalidate disclosure requirement). For this reason I agree with the court that the challenge to the record keeping and audit provisions of the FECA, 2 U.S.C. §§ 432(b), (c), (d), 438(a)(8), is not yet ripe for review. *See* — F.2d at — *supra*.

25. *Compare, e. g.*, Bates v. Little Rock, *supra* note 3, *and* NAACP v. Alabama *ex rel.* Patterson, *supra* note 3, *with, e. g.*, Gibson v. Florida Legislative Investigation Comm., *supra* note 3, *and* Shelton v. Tucker, *supra* note 3. *See also* Pollard v. Roberts, 283 F.Supp. 248 (E.D.Ark.), *aff'd mem.* 393 U.S. 14 (1968).

26. *See* cases cited note 3 *supra*. Even when upholding disclosure requirements, the Court has never relied on the state of the record, but has always looked to the strength of the governmental interests. *See* Communist Party v. Subversive Activities Control Board, 367 U.S. 1 (1961); Konigsberg v. State Bar, 366 U.S. 36 (1961); Barenblatt v. United States, 360 U.S. 109 (1959); Uphaus v. Wyman, 360 U.S. 72 (1959). *See also* Stoner v. Fortson, 379 F.Supp. 704 (N.D.Ga.1974).

27. The Court has shaped both procedural and substantive rules to guard against anticipated but unproven chills. *See, e. g.*, Bigelow v. Virginia, 95 S.Ct. 2222, 2230 (1975); Erznoznik v. Jacksonville, 95 S.Ct. 2268, 2277 (1975); Keyishian v. Board of Regents, 385 U.S. 589, 601 (1967); Lamont v. Postmaster General, 381 U.S. 301, 307 (1965); Freedman v. Maryland, 380 U.S. 51 (1965); Dombrowski v. Pfister, 380 U.S. 479 (1965); New York Times Co. v. Sullivan, 376 U.S. 254, 277 (1964); NAACP v. Button, 371 U.S. 415 (1963); Smith v. California, 361 U.S. 147, 153 (1959); Speiser v. Randall, 357 U.S. 513, 526 (1958).

28. — F.2d at — *supra*. The court's reliance on Stoner v. Fortson, 379 F.Supp. 704 (N.D. Ga.1974) is misplaced. Stoner involved the entirely separate problem of disclosure by "controversial" candidates in major party primaries. The *Stoner* court's refusal to exempt such candidates from disclosure can be justified because of the great difficulties in distinguishing "controversial" from noncontroversial candidates. Those same difficulties do not arise, however, in distinguishing major and minor parties. *See* note 1 *supra*. *See also Developments, supra* note 1, at 1250–51.

29. In this century only 4 non-major party candidates for President have received over 5% of the vote. Finding I, ' 85. Since 1932 non-major party candidates have never received more than 5% of the total vote cast for Congressmen. *Id.* In 1974, of the 286 minor party and independent candidates running for Congress, only 46 received more than 5% of the vote and none were elected. Findings IIA, ' 7.

30. Minor parties seldom account for more than 2% of the funds expended in a race. *See id.* ¶¶ 12, 35, 51. Only 20 of the 286 non-major party Congressional candidates in 1974, and 21 of the 241 such candidates in 1972 spent over $10,000. *Id.* ¶¶ 19, 29, 41, 48.

31. Only 6% of the contributions to minor parties are in amounts over $1,000. *See id.* ¶¶ 56, 73. In contrast, President Nixon raised 55% and Senator McGovern 34% of their budgets through contributions of over $1,000. *Id.* ¶ 73.

32. *See* A. Bickel, *supra* note 13, at 70–71; H. Bone, American Politics and the Party System 300–04 (1955); C. Ewing, Presidential Elections 108–09 (1940). *See generally* W. Hesseltine, The Rise and Fall of Third Parties (1948); D. Mazmanian, Third Parties in Presidential Elections (1974).

33. *See* — F.2d at — *supra*. The court alludes to two other evils disclosure might uncover or deter: illegal contributions and undue influence. *Id.* at — n.114. Disclosure can affect illegal contributions, however, only in the unlikely event that a party would disclose its own illegalities. The undue influence concern, while more substantial, arises only if a minor party candidate wins an election. A less restrictive alternative, which would leave unaffected contributors to unpopular, unsuccessful parties, would be to require disclosure only of *winning* minor party candidates.

34. Because 18 U.S.C. § 614 prohibits contributions in the name of another, minor parties will be able to know the source of their donations unless one posits massive lawlessness.

35. The limits on contributions imposed by 18 U.S.C. § 608(b)(1) make necessary conspiracies if stalking horses are to be launched.

36. *See, e. g.*, Whitney v. California, 274 U.S. 357 (1927) (Brandeis, J., dissenting) ("Fear of evil cannot alone justify suppression of free speech and assembly"); Schenck v. United States, 249 U.S. 47 (1919). *Cf.* Brandenburg v. Ohio, 395 U.S. 444 (1969) (only advocacy of "imminent lawless action" can be proscribed).

TAMM, Circuit Judge (concurring in part and dissenting in part):

I take this opportunity to set out my views briefly on the constitutionality of this statute, which, in the name of reform and in furtherance of legitimate governmental interests, cuts deeply into our most highly prized freedoms. In light of the compelling need for expedition of this matter to facilitate the earliest Supreme Court review, this is not the occasion for an exhaustive exposition, and I shall be content merely to highlight the difficulties I perceive in this comprehensive attempt to reform and purify our electoral process.

I. Standards and Interests

To approach the question of the statute's constitutionality properly, the initial step must be to identify the rights plaintiffs seek to protect in attacking the statute and the interests the Government seeks to effectuate by its enactment. Only after such an inquiry can an identification of the type of interest the Government must advance to justify the statute be made and an analysis of whether the means chosen in the statute are appropriate to further those interests be undertaken.

Plaintiffs assert that the Federal Election Campaign Act (FECA) violates their first amendment rights. In order to accept that claim, the contribution or expenditure of money for political purposes must be considered protected speech or political association. Plaintiffs claim that "[t]he contribution of money to a candidate" is "precisely the sort of [first amendment] associational freedom protected in *NAACP v. Alabama*, 357 U.S. 449 (1958), and *Kusper v. Tontikes*, 414 U.S. 51 (1973)." Pl. Br. at 101. Expenditures, plaintiffs opine, is the basis of every political communication protected by the first amendment and thus must be considered "pure speech", *Edwards v. South Carolina*, 372 U.S. 229 (1963), whose protection "is a major purpose of the amendment." *Mills v. Alabama*, 384 U.S. 214, 218 (1966). Defendants and intervenors, while conceding that campaign contributions can affect first amendment interests, in part respond that money is not equivalent to speech and is, at best, speech plus action. As such, the Government's interest in regulation is stronger and thus the case does not present the clash of constitutional interests that plaintiffs contend. *See United States v. O'Brien*, 391 U.S. 367, 376 (1968).

I am inclined to conclude that campaign expenditures, at least, are so intertwined with direct political communication to be indistinguishable for first amendment purposes; for example, political advertising, through the media, bumper stickers, mailings, or pamphlets, clearly must be considered "pure speech." *See Bigelow v. Virginia*, — U.S. — (1975). Political contributions, also in my mind, are connected with important speech and associational interests, although admittedly containing other, less constitutionally-valued components. However, as can be seen *infra*, I need not go beyond these conclusions and establish at this time a hierarchy of political speech to resolve the issues before us. It is sufficient to conclude that the Government must advance a compelling interest to justify the intrusions into plaintiff's first amendment rights.

Defendants, at argument, conceded that they must demonstrate a "compelling need" for the legislation and that it must represent the "least restrictive" intrusion into "protected rights." Defendants advance multiple governmental interests which they assert that Congress found compelling and justifying the legislation. Those interests, include: (1) the skyrocketing increase in campaign costs with the accompanying effects of unnecessary spending and freezing out candidates for office; (2) the increasing dependence of candidates on large contributors, who thus had a disproportionate ability to affect the process, and whose influence increased the possibility or appearance of corruption; (3) the so-called "Watergate problem" and (4) the alienation from and disillusionment in the electoral process by this country's citizens. Defendants assert that prior campaign legislation has proven inadequate to curb campaign finance abuses, which contributed to the "compelling need for comprehensive prophylactic measures that would restore public faith in the electoral process." Int. Def.'s Br. at 60. In addition, FECA, defendants argue, promotes other governmental interests, including: (1) increasing the flow of information to the public; (2) opening politics to candidates; and (3) equalizing the ability of all citizens to affect electoral outcomes.

I am prepared to accept the validity of these legislative facts as found by Congress to be legitimate interests. No one disputes that there have been abuses and inequities in our electoral process; each of us applauds any effort to enhance the impact of each citizen on the process and to cleanse the system of the taint or appearance of corruption and undue influence. However, sympathy, no matter how heartfelt, for the aims of the legislation before us must not override our obligation to protect the liberties, which are the bedrock of the republic, from infringement even for the noblest of purposes.

Thus, we must scrutinize the entire package of regulation and limitation on individual choice carefully to ensure that they are all indispensable to effectuate the delineated legislative ends. We must also examine FECA to determine whether those purposes justifying particular regulation are undercut by other portions of the statute. We are not substituting our judgment for that of the legislative branch when we are called upon to perform this type of review.

II. Disclosure

I must agree that, in general, the disclosure provisions of the statute most directly effectuate the congressional goals of preventing corruption and undue influence. *See Stoner v. Fortson*, 379 F.Supp. 304 (N.D.Ga.1974). As Justice Brandeis has written:

> Sunlight is said to be the best of disinfectants. Electric light the most efficient policeman.

L. Brandeis, Other People's Money 92 (1914). The Supreme Court has noted that "informed public opinion is the most potent of all restraints upon mis-government." *Grosjean v. American Press*, 297 U.S. 233, 250 (1936). In a similar vein, disclosure increases the quantity of information reaching the body politic and furthers the first amendment goal of "producing an informed public capable of conducting its own affairs." *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 392 (1969).

Plaintiffs contend that disclosure impermissibly "chills" the exercise of first amendment rights, especially in respect to contributions to unpopular or controversial groups; that the threshold level triggering disclosure is impermissibly low; and that the Government has demonstrated no need to require disclosure for contributions to minority or new parties. However, the record before us does not contain any evidence of individuals

chilled by disclosure provisions which have previously been in force, nor any indication of harassment of contributors to unpopular groups; there appears to me to be no evidence to sustain such a claim at this time. *Cf. United States v. Finance Comm. to Re-Elect the President,* 507 F.2d 1194 (D.C.Cir.1974). There also does not appear to be anything unreasonably about the triggering mechanism. It is high enough to exempt a significant number of contributions and "high enough for a political campaign to enjoy substantial support from secret gifts alone," *United States v. Finance Comm. to Re-Elect the President, supra,* 507 F.2d at 1200, yet low enough effectively to prevent evasion through pooling of lower contributions and to allow the voting public to discern a pattern of support.

Finally, I find unconvincing plaintiff's challenge to requiring disclosure of contributors to minor or new parties. Disclosure eliminates the so-called "stalking horse" problem, where minor parties are secretly funded to dissipate potential support from more serious opposition. Disclosure also furthers the public interest of knowing the source of significant financial support of all those who enter the political marketplace to compete for votes. Hence, with one exception, I would uphold on this record the FECA disclosure requirements.

That exception is 2 U.S.C. § 437(a), "Reports by certain persons." Section 437(a) requires the disclosure of contributions and expenditures of any non-individual

> who expends any funds or commits any act directed to the public for the purpose of influencing the outcome of an election, or who publishes or broadcasts to the public any material referring to a candidate (by name, description, or other reference) advocating the election or defeat of such candidate, setting forth the candidate's position on any public issue, his voting record, or other official acts (in the case of a candidate who holds or has held Federal Office), or otherwise designed to influence individuals to cast their votes for or against such candidates or to withhold their votes from such candidates shall file reports with the Commission. . . .

Under this section, therefore, plaintiff American Civil Liberties Union must disclose its contributors and expenditures since it publishes a membership newsletter with voting records on civil liberties issues. Under this section, a similar requirement would be placed on a Right-to-Life group who places a newspaper advertisement calling for the election of all candidates who support an anti-abortion constitutional amendment.

I can hardly imagine a more sweeping abridgement of first amendment associational rights. Section 437(a) creates a situation whereby a group contributes to the political dialog in this country only at the severest cost to their associational liberties. I can conceive of no governmental interest that requires such sweeping disclosure of all groups who take a stand on a public issue or report voting records, even only to its own membership. This is a far harsher statute than the one condemned in *ACLU v. Jennings,* 366 F.Supp. 1041 (D.D.C.1973), *vacated as moot,* 43 U.S.L.W. 3673 (U.S. June 23, 1975). It represents a greater intrusion than any found in the line of cases commencing with *NAACP v. Alabama,* 357 U.S. 449 (1958).

Of course, the statute could be narrowly construed, perhaps restricted to groups specifically endorsing candidates or groups whose endorsements were not based on a long-standing issue orientation. However, that would involve us in judgments best left to Congress. We have held that if Congress clearly intended the unconstitutional interpretation, we may not avoid striking the statute down. *United States v. Thompson,* 452 F.2d 1333, 1341 (D.C.Cir.1971), *cert. denied,* 405 U.S. 998 (1972). From reference to the legislative history, it is abundantly clear that that is the case here. *See e. g.,* 120 *Cong.Rec.* H 10332–33 (daily ed. Oct. 10, 1974) (remarks of Rep. Frenzel); *id.,* at H 10327 (daily ed. Oct. 10, 1974) (remarks of Rep. Hays). I would strike down section 437(a) as violative of the first amendment.

III. Contributions

The limit on individual contributions, codified in 18 U.S.C. § 608(b), represents an attempt by Congress to reduce the perceived influence large contributors have on the electoral process. However, while the issue has posed some difficulty for me, I must conclude that section 608(b) cannot stand. Alternative lines of analysis lead me to the identical conclusion.

I start from the proposition that contributions, as defined in 18 U.S.C. § 591(e), contain substantial components of speech and associational activities protected by the first amendment. This statute directly attempts to regulate and limit these activities.

Congress took this action in furtherance of one-man, one-vote principles and to equalize the effects individuals and groups can have on the political process. However, that interest was only partially carried out, and the classification created only regulates certain types of disproportional influences. Under section 591(e)(5), services are excluded from contributions. This allows the housewife to volunteer time that might cost well over $1000 to hire on the open market, while limiting her neighbor who works full-time to a regulated contribution. It enhances the disproportional influence of groups who command large quantities of these volunteer services and will continue to magnify this inequity by not allowing for an inflation adjustment to the contribution limit. It leads to the absurd result that a lawyer's contribution of services to aid a candidate in complying with FECA is exempt, but his first amendment activity is regulated if he falls ill and hires a replacement. Hence, section 608(b) creates for me fatal equal protection problems.

In classifying the contributions of money or services to a political campaign as first amendment activity, I, of course, do not include the donation of money or services in exchange for the promise or expectation of political favoritism after an election. Such activity, donated in expectation of a *quid pro quo,* is clearly outside the ambit of the first amendment and may be regulated or prohibited by the Government. However, with that exception, I am inclined to the conclusion that the fundamental spirit of the first amendment prohibits the regulation of any individual's contribution to the political dialog and electoral process, whether that individual's major resource is time or money. I entertain grave doubts whether the Constitution permits the type of line-drawing Congress has attempted here, even for the most benevolent of motives.

I do not believe that the "Hatch Act" cases present any barrier to this conclusion. The bars on active, partisan political activity by present governmental employees, most recently upheld in *United States Civil Service Comm. v. Letter Carriers,* 413 U.S. 548 (1973), is grounded

on the most compelling of governmental interests—the need to preserve the effective and fair operation of Government, without bias or favoritism for all citizens, no matter the party presently holding power. *Id.* at 564–65. That mechanism to protect the very integrity of Government is not at issue here. Finally, the constitutional validity of Congress' attempt to regulate union and corporate political activities has never been resolved and is thus not dispositive. *See Pipefitters Union v. United States*, 487 U.S. 385 (1972); *United States v. UAW*, 352 U.S. 567 (1957); *United States v. CIO*, 335 U.S. 106 (1948).

Third, section 608(b) is constitutionally infirm because it is overbroad and regulates activities protected by the first amendment unnecessary to interests behind the statute, as evidenced by Congress' own actions. Section 608(b) limits "contributions to any candidate with respect to any election for Federal Office. . . . ." The ceiling is imposed "to do away with the corresponding undue influence of large campaign donors on those who win elections." Int. Def.'s Br. at 83. This limit covers all candidates and all parties, whether major or minor. However, Congress, in the public financing section of FECA, refused to fund fully non-major party candidates because of the unlikelihood of their election. In other words, these groups or individuals cannot accept large contributions because they might be unduly influenced *if they win*, but are ineligible for full funding because Congress believes *they have little chance of winning*. Congress cannot have it both ways and still justify abridgement of protected rights. Moreover, Congress has advanced, in my opinion, no compelling interest to justify eliminating the often salutary effect of a candidate or contributor heavily financing a candidacy which brings a dissident viewpoint or proposal into our political dialog. As the Supreme Court has noted: "History has amply proved the virtue of political activity by minority, dissident groups, who innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted." *Sweezy v. New Hampshire*, 354 U.S. 234, 250–51 (1957). Under this analysis, section 608(b) must be stricken on overbreadth grounds.

Another part of section 608, subsection (e), deserves independent scrutiny and should be declared unconstitutional, regardless of one's view on contribution limits. Section 608(e) is a "loophole closer" and limits to $1,000 any individual expenditure made relative to a clearly identified candidate. This section, like expenditure ceilings discussed *infra*, is a direct limitation on political communication. Its limit is set below the present cost of a full-page advertisement in the *Washington Post*, Agreed Fact 65, and is not subject to adjustment. As such, it would appear to prohibit the publication of independent speech, such as a paid letter stating why an individual, who may have some influence, endorses a candidate. This type of prior restraint on independent speech is the problem which was avoided regarding Title I of 1971 FECA by construing such conduct outside its reach. *See United States v. National Comm. for Impeachment*, 469 F.2d 1135 (2d Cir. 1972); *cf. ACLU v. Jennings, supra*. I can sympathize with similar efforts to construe section 608(e), since, if one accepts the validity of the contribution limits, some mechanism to prevent easy circumvention of the ceiling is necessary. However, since I would invalidate section 608(b) itself, I am prepared to strike down section 608(e) completely.

IV. Expenditures

I also believe that the limitation on campaign expenditures must fall as a *per se* abridgement of the right to free expression. It appears to me axiomatic that in our modern society, campaign contributions are inexorably intertwined with political communication, so that the regulation of either is the regulation of both. Never before in our history has the Government attempted to regulate the quantity of debate in the political arena. No one, not even Congress, can ascertain the proper quantum of public discussion of issues; this type of paternalism in the area of ideas and political communication is, or should be, completely alien to our democratic system of government.

The interests advanced to justify this aspect of FECA appear to be woefully inadequate. Federal defendants contend that expenditure limits are required to reduce the soaring increases in the costs of seeking office. Fed. Def.'s Br. at 83–84. This argument requires the heroic assumption that some of these costs are superfluous and that unnecessary discussion of public issues have occurred; in fact, some believe that there has been a paucity of real discussion of public issues. Intervening defendants assert that ceilings will equalize all candidates. Intervening Def.'s Br. at 127. Equalizing one characteristic between candidates only accents the other advantages a candidate may possess—name recognition, incumbency, or identification with popular issues, and eliminates the one real equalizing factor a candidate may have, the unfettered ability to promote one's cause or ideas. In sum, while I do not believe any governmental need justifies this restriction, none has been advanced which is even remotely convincing.

Further, I do not find any support for expenditure restrictions in *Kovacs v. Cooper*, 336 U.S. 77 (1949), the oft-cited sound truck case. Dollars are *not* merely the functional equivalent of decibels. By regulating sound trucks through a noise ordinance, the Government was not regulating the *quantity* of speech; Mr. Kovacs could broadcast *as much and as often* as he desired. That is not the case here. Congress is attempting to limit quantity and frequency of speech, a wholly different situation for which *Kovacs* offers no support.

Thus, I find myself in agreement with the view expressed by the unanimous Oregon Supreme Court when recently striking down a state expenditure limitation statute. *Deras v. Myers*, —— Ore. ——, —— P.2d —— (May 14, 1975). The court concluded that there was no evidence "that our system of government is imperiled by the free expenditure of funds in political campaigns." *Id.* at ——. It rejected the corruption or "Watergate" rationale with the observation:

> We fail to see how these evils are relevant to the need for controlling campaign expenditures. The "break-in", the bribery, the "wire tap", the use of government servants for private political ends, the "cover up," the various "dirty tricks," and the other moral and legal deviations characterizing "Watergate" had little or nothing to do with the fact that large sums of money were available to a political party.

Id. at ——. Finally, the Oregon court invoked what the United States Supreme Court has termed the "classic formulation" of the fundamental nature of the right of free expression, particularly applicable here, Justice Brandeis writing in *Whitney v. California*, 274 U.S. 357, 375–76 (1927) (Brandeis, J., concurring):

Those who won our independence believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law—the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed.

Even if my brethern are inclined to uphold both the disclosure and contribution provisions, I cannot understand what government need requires them to go further and approve this startling restriction on free expression. The interests in preventing corruption and undue influence are fully effectuated by the former two provisions, and what is then accomplished through expenditure ceilings escapes me. If a senatorial candidate can raise $1 from each voter, what evil is exacerbated by allowing that candidate to use all that money for political communication? I know of none.

The majority adopts defendants' argument that the ineffectiveness of piecemeal reform justified the passage of this comprehensive package. However, comprehensiveness does not authorize unnecessary curtailment of fundamental freedoms when a less restrictive alternative effectuates the same interests and has yet to be proven ineffective. The majority suggests that expenditure limits serve as a protection against violation of the disclosure and contribution limits. However, every restriction on freedom lessens the opportunity for violation of the law, but our democratic principles do not condone governmental action taken on that rationale. Finally, stripped of its plumage, the majority's position is that the expenditure limits pass constitutional scrutiny because political expenditures have substantial non-speech elements; after *Bigelow v. Virginia, supra,* which the majority nowhere discusses, that is no longer the law.

I would therefore invalidate 18 U.S.C. § 608(e).

V. Public Financing

Assuming that we have jurisdiction under 2 U.S.C. § 437h to review the Subtitle H provisions, I would conclude that while Congress has the power to commit public resources to fund electoral campaigns, the method embodied in this statute is not the least restrictive available to preserve first amendment values and should be set aside. I would also hold that the present scheme violates the fifth amendment by impermissibly depriving minor and new party presidential candidates their justifiable share of the public monies at a meaningful time.

Initially, I agree that Congress' constitutional power to raise and spend money to "provide for the . . . general Welfare of the United States," *U.S. Const.* art. I, § 8, cl. 1, encompasses the authority to publically finance presidential campaigns. The Supreme Court has held that this power is not limited by the direct constitutional grants of legislative power. *See United States v. Butler,* 297 U.S. 1, 66 (1936). Plaintiffs offer no persuasive reason to overrule Congress' general legislative judgment that public financing is in the public interest. However, the method with which Congress implements its authority must be in a manner that does not infringe upon individual liberties. Under this standard, the present statute fails.

26 U.S.C. § 6096 permits a taxpayer to earmark, by checking a box on his tax return, $1 of his tax liability for financing presidential election campaigns. However, the taxpayer has no control over what candidate or party receives this contribution. Under this scheme, the American taxpayer forfeits the opportunity to engage in first amendment activity to support or withhold support from candidates on the basis of those candidates' beliefs. To permit a taxpayer to support the worthy goal of public financing only through a non-designation method places him in a coercive dilemma. Thus, I am inclined to agree with Thomas Jefferson who wrote,

> to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical . . . .

Padover, *The Complete Jefferson* 946 (1942).

The question, therefore, is whether the beneficial aspects of public financing could be obtained in a manner which intrudes less severely or coercively on individual choice to exercise first amendment rights. In making that inquiry, we are not substituting our judgment for that of Congress' by reexamining its selection among alternative schemes, but are ensuring that when making that selection, Congress protected, to the maximum extent possible, basic constitutional rights.

Apparently, Congress rejected several alternative schemes which appear to offer individuals greater political choice. One such plan was offered by plaintiff-intervenor Metcalf. Senator Metcalf's voucher system would allow taxpayers to send authorizations to the candidate of one's choice, redeemable for public monies. Another proposal, made by Senator Mathias, would have allowed taxpayers to designate their choice of candidates or parties on the tax return itself.

The issue then becomes whether the rejection of these less restrictive alternatives was required to preserve the basic interests behind public financing. Unfortunately, the legislative history reveals that was not the case at all. Senator Long, who offered the non-designation amendment, stated that its effect would be to "quit confusing people. Rather than saying both Democrats or Republicans are the party of one's choice, the taxpayer just makes a check on the tax return . . . ." 119 *Cong. Rec.* S 12196 (daily ed. June 27, 1973). Another proponent, Senator Pastore, argued that allowing designation of candidates or parties "would not be fair. What we are trying to do is to give both sides the same amount of money . . ." *Cong.Rec.* S 18891 (daily ed. Nov. 17, 1971). Besides demonstrating a myopic two-party view of the political spectrum, this legislative history points to no inter-

est underlying public financing which requires the existing plan. Consequently, I must vote to set aside the check-off provision, since it does not represent the least, or a lesser, intrusive method to effectuate legitimate interests and unnecessarily curtails first amendment choice. In doing so, I must admit my surprise that the majority, while conceding the validity of this limitation against legislative actions, *see, e. g., Shelton v. Tucker,* 364 U.S. 479 (1960), fails even to test section 6096 against these standards.

I also adhere to the view that the allocation of public funds contained in Chapter 95 violates the fifth amendment by unnecessarily discriminating against minor and new party candidacies. The Supreme Court has stated the applicable test to judge governmental attempts to effectuate its compelling interests regarding the electoral process:

> legitimate [governmental] interest[s] . . . . must be achieved by a means that does not unfairly or unnecessarily burden either a minority party's or an individual candidate's equally important interest in the continued availability of political opportunity.

Lubin v. Panish, 415 U.S. 709, 716 (1974).

Chapter 95 fails to meet that test. The major difficulties arise from the facts that: (1) minor parties only get a proportion of funding based on their last electoral performance and, more importantly, new parties get no funding until after an election; and (2) while funding is provided for conventions and, on a matching basis, for primary campaigns, none is authorized for activities necessary to obtain a place on the ballot. First, that procedure will often overcompensate declining political movements and under-compensate movements with increasing support; for example, under this statute, American Party candidate George Wallace would have been entitled to no money before the 1968 election, but his strong performance would have qualified 1972 candidate Schmitz to substantial pre-election payments, even though Schmitz was a far less serious candidate.

More fundamentally, the system makes no attempt to provide aid to new parties before the election, when it is undoubtedly the most helpful. This is true no matter what indicia of support those parties' candidates can supply. Perhaps this is unsurprising in light of the bias toward the major parties we have seen in the legislative history. However, *any* candidate for the *nomination* of a party who runs in primaries is entitled to federal funds, no matter how marginal his candidacy or overwhelming his opposition, so long as he raises the requisite quantum of contributions. Once again to invoke the 1968 example, George Wallace or Eugene McCarthy (if he formed a fourth party after the Democractic convention) would have been ineligible for pre-election funding; Harold Stassen may have been able to receive monies. There has been no demonstration, aside from unconvincing explanations that the system "was the best we could do," why a similar threshold limit of support, albeit possibly different than the one presently in section 9033(b), could be established for some increment of pre-election money for new parties. Without such a demonstration, and coupled with the additional restrictions on contributions which the majority upholds today, I am constrained to conclude that Congress has placed insurmountable burdens in the paths of any new parties entering our political system. Hence, Chapter 95 represents a means that unfairly or unnecessarily burdens non-major parties' interest in the continued availability of political opportunity. *Lubin v. Paush, supra.*

Nothing in *American Party of Texas v. White,* 415 U.S. 767 (1974) undermines that conclusion. Intervening defendants cite *American Party* for the proposition that a government "does not violate the First Amendment or deny equal protection by enacting regulations that recognize the inherent differences among types of political movements." Int. Def.'s Br. at 171. That is far too broad a reading of the case. The Supreme Court in *American Party* upheld a statute which reimbursed expenses for conducting primaries which major parties alone were statutorily required to hold. The Court did not think it unfair that minor parties were not compensated for petitioning and convention expenses, since the Court found that all political parties were required to hold conventions by statute and none of those expenses were reimbursed. Such funding of required expenses is not before us here. The Court also held that a government need not "finance the effort of every nascent political group seeking to organize itself and *unsuccessfully* attempting to win a place on the general election ballot." *Id.* at 794 (emphasis supplied). That is far cry from refusing to support candidacies at a meaningful time even if the party has successfully placed its name on the ballot in every state, while funding any seeker of a major party nomination who demonstates a modicum of support.

I dissent from the upholding of the public financing provisions.

VI. The Commission

Plaintiffs launch a multi-pronged attack against the enforcement provisions of FECA. The Attorney General, while arguing that the issue is not ripe for consideration, argues that the Federal Election Commission, as presently established, violates the principle of separation of powers. I concur in the proposition that many of the questions concerning the powers of the Commission, particularly the authority under 2 U.S.C. § 456 to disqualify individuals from seeking office for failing to file reports, can be deferred. However, I believe that the challenge to the composition of the Commission can be disposed of now and that the present appointment provision violates article II, section 2 of the Constitution.

2 U.S.C. § 437c(b) empowers the commission to

> administer, seek to obtain compliance with, and formulate policy with respect to this Act . . . [and to possess] primary jurisdiction with respect to the civil enforcement of such provisions.

The Commission has rulemaking authority, investigative and subpoena powers and may issue advisory opinions; it has already instituted rulemaking proceedings. All of these duties have direct effects on the political operations of most of the plaintiffs before us, and the Commission stands ready to enforce the Act which prohibits the activities in which plaintiffs wish to engage. *See Civil Service Comm. v. Letter Carriers, supra,* 413 U.S. at 551. It is clear that all planning in this political season must be made with FECA and the Commission in mind. *See e. g.,* Witcover, *New Campaign Fund Law Already Making Critical Impact, Washington Post,* Mar. 15, 1975, at § A, p. 3, col. 3. In sum, the question of whether the agency established to administer FECA, which is now actively engaged in that administration,

may constitutionally perform such tasks appears ripe for resolution.

The Commission argues strenuously in its separate brief that all of its functions are encompassed in Congress' legislative authority and role in the conduct of the federal electoral process. I disagree with that characterization. FECA delegates to the Commission a multitude of duties—some which require the execution of the statutory provisions are clearly executive; others which involve rule-making and information gathering *vis-a-vis* the electoral process are quasi-legislative; still other duties, including the disqualification power and the rendering of the interpretative opinions, are quasi-judicial. As such, the Commmssion is most like the independent agencies such as the Federal Trade Commission or Interstate Commerce Commission. Moreover, as are the members of the latter two commissions, the members of the Federal Election Commission are "officers of the United States" as the term is used in article II, section 2.

Thus, section 437c(a)(1), the appointment provision for the Commission, appears to violate article II by placing the appointment power for four of six members of the Commission in the hands of members of Congress. To find otherwise would lead to the equally devastating conclusion that the Commission is a legislative delegate exercising powers in violation of the constitutional principle of separation of powers. *See, e. g., Springer v. Government of the Philippine Islands,* 277 U.S. 189, 201–02 (1928); *Ponzi v. Fessenden,* 258 U.S. 254, 262 (1922).

The Commission's and intervening defendants' arguments to the contrary are unpersuasive. Neither the Officers of the Houses of Congress, nor the members of the quasi-public associations or corporations, for example the Washington National Monument Society and the American National Red Cross, nor the members of study or fact-finding commissions, for example the National Commission on Consumer Finance and the Commission on Political Activity of Government Personnel, exercise anywhere the degree of executive or quasi-judicial authority with which the Federal Elections Commission is empowered. Moreover, to the contrary of the Commission's argument, much of this authority falls well outside the ambit of Congress' basic constitutional role in the conduct of the federal electoral process, especially in regards to Presidential elections. Further, *Humphrey's Executor v. United States,* 295 U.S. 602 (1935) is of no help to defendants here. *Humphrey's* dealt with the scope of the President's removal power over officers of independent agencies; the President's constitutional authority over the *appointment* of such officers was assumed. Finally, the long-standing congressional practice of establishing qualifications for federal officers is not the equivalent of the exercise of appointment power. *See* Supplemental Reply Br. of Int. Def. at 44–45.

I would invalidate the appointment provision of FECA.

VII. Conclusion

I concede that upholding the statute is an appealing result. Congress, for the most part, acted out of the best of motives, and any measure which attempts to reduce the abuses and inequities that have plagued our electoral system and have sapped public confidence in governmental institutions could easily induce a predisposition for approval. I am afraid that this phenomenon, coupled with the recognition that we serve here primarily as the jurisdictional prerequisite to ultimate Supreme Court disposition, may have partially contributed to the result reached today. Moreover, in the face of plaintiff's all-inclusive attack on the statute, it becomes somewhat difficult to focus upon the need and justification for each increment of government regulation and prohibition of first amendment rights contained in the various parts of FECA. Quite frankly, that is the only explanation I have for the majority's affirmance of the FECA expenditure limits. In fact, the majority's voluminous opinion boils down to the simple argument that the statute's purpose is benevolent and that restrictions on freedoms can be summarily dismissed as incidental.

For my part, I adhere to the firm belief that even the most noble of intentions cannot supplant our traditional liberties, nor justify the establishment of government ceilings on first amendment activities and the unnecessary implantation of rigidity into our political system. Defendants argue that if FECA is declared unconstitutional, the Constitution contains the seeds of *its* own destruction. I respond that the Constitution prevents us from sowing the seeds of *our* own destruction by placing limits on political communication—the foundation of all our freedoms.

Judge Wilkey joins in this opinion.

MacKINNON, Circuit Judge (concurring in part and dissenting in part):

I concur generally in the court's responses to the first seven and the ninth certified constitutional questions. Plaintiffs clearly have made sufficient assertions of interests which are affected by the election statutes under review to give them standing, and the impact on their interests is sufficiently immediate to make most of the issues raised ripe for review. The reporting and disclosure requirements and the limitations on contributions and expenditures are valid exercises of Congress' power to regulate federal elections. *United States v. Classic,* 313 U.S. 229 (1941); *Burroughs & Cannon v. United States,* 290 U.S. 534 (1934). While the $1000 limits on individual contributions and independent expenditures may be low, this is a matter best left to determination by Congress, and the limits it chose cannot be said to be arbitrary or unreasonable. The public financing provisions are within the congressional authority to make expenditures for the "general welfare of the United States" under Article I, section 8, of the Constitution. While plaintiffs have raised serious questions concerning the impact of these election laws on their first amendment interests, I do not believe that there is any grounds for this court to overturn on a wholesale basis the congressional determinations embodied in the substantive provisions of the Act.

I

I do question the constitutionality of section 437a which requires that:

> Any person (other than an individual) who expends any funds or commits any act directed to the public for the purpose of influencing the outcome of an election, or who publishes or broadcasts to the public any material referring to a candidate (by name, description, or other reference) advocating the election or defeat of such candidate, setting forth the candidate's position on any public issue, his voting record, or other official acts (in the case of a candidate who holds or has held Federal office), or otherwise designed to influence individuals to cast their votes for or against such candidates or to withhold their votes from

such candidates shall file reports with the Commission as if such person were a political committee. The reports filed by such person shall set forth the source of the funds used in carrying out any activity described in the preceding sentence in the same detail as if the funds were contributions within the meaning of section 431(e) of this title, and payments of such funds in the same detail as if they were expenditures within the meaning of section 431(f) of this title. The provisions of this section do not apply to any publication or broadcast of the United States Government or to any news story, commentary, or editorial distributed through the facilities of a broadcasting station or a bona fide newspaper, magazine, or other periodical publication. A news story, commentary, or editorial is not considered to be distributed through a bona fide newspaper, magazine, or other periodical publication if—

(1) such publication is primarily for distribution to individuals affiliated by membership or stock ownership with the person (other than an individual) distributing it or causing it to be distributed, and not primarily for purchase by the public at newsstands or by paid subscription; or

(2) the news story, commentary, or editorial is distributed by a person (other than an individual) who devotes a substantial part of his activities to attempting to influence the outcome of elections, or to influence public opinion with respect to matters of national or State policy or concern.

At first glance, this section appears to be a substantial duplication of section 434(e) which requires reports by every person who makes contributions or expenditures (other than to a political committee or a candidate) in excess of $100. There seems to be only two possible reasons for the enactment of section 437a: (1) to force certain persons who expend less than $100 to file reports; or (2) to require the reporting of certain fund outlays which are excluded from the definition of "expenditure" in section 431(f)(4). As the former situation is certainly too trivial to have merited this much congressional attention, only the latter appears to be the real basis for section 437a. Thus the issue is whether Congress has any legitimate interest in requiring disclosure by persons who are not required to report "expenditures" under section 434(e).

The conclusion seems inescapable that section 437a is directed to disclosure of exactly the type of activities carried on by plaintiffs New York Civil Liberties Union and the American Conservative Union, among others. See Remarks of Congressmen Hays and Frenzel, 120 Cong. Rec. H 10327, 10332–33 (Daily ed. Oct. 10, 1974) which specifically disavow earlier statements by Senate sponsors that tended to limit the reach of this section. A restrictive construction of the statute might have certain attractions, but it is simply not supported by the specific language or the legislative history. Since section 437a is explicitly directed to compelling disclosure of activities protected by the First Amendment, *ACLU v. Jennings*, 366 F.Supp. 1041 (D.D.C.1973) (three-judge court), *prob. juris. noted sub nom. Staats v. ACLU*, 417 U.S. 944 (1974), *vacated as moot*, — U.S. — (1975), in my view this section is unconstitutional. Section 434(e) is by itself sufficient to assure the disclosure of those expenditures which Congress has a legitimate interest in regulating. If in fact what prompted Congress to enact section 437a was a concern that "non-bona fide" publications would appear prior to elections and claim to be exempt from reporting due to the definition of "expenditure," that concern can be allayed simply by construing section 431(f)(4)(A) as referring only to legitimate "publications."

The Commission shall administer, seek to obtain compliance with, and formulate policy with respect to this Act and sections 608, 610, 611, 613, 614, 615, 616, and 617 of Title 18, United States Code. The Commission has primary jurisdiction with respect to the civil enforcement of such provisions.

In addition, section 437d confers broad investigative and subpoena powers on the Commission, and section 437f authorizes it to issue advisory opinions with respect to potential violations. In light of the deep and pervasive involvement of the Commission in the present and anticipated political affairs of the plaintiffs, I would hold that Questions 8(a), 8(b) and 8(d) are ripe for review.

Furthermore, I do not believe that the Commission's enforcement powers are sufficiently separate from its other duties that review of them should be postponed. Under section 437g(a)(5), the Commission is empowered to commence civil enforcement proceedings whenever it determines "that there is reason to believe that any person has engaged, *or is about to engage* in any acts or practices which constitute or will constitute a violation of this Act . . . ." (Emphasis added.) This power to anticipate violations and seek injunctions against persons suspected of planning activity which may be unlawful certainly gives the enforcement role of the Commission a much more immediate impact on plaintiffs' affairs than does the normal statutory enforcement procedure which is brought into play only after a violation has occurred (as is the case with disqualification under section 456). In light of the "inhibitory effect" which these enforcement powers can have on plaintiffs' political activities, I would hold that

II

I do not join in the court's responses to the issues presented by Question 8 and its subparts. After considering the composition of and the powers vested in the Federal Election Commission, it is my conclusion that as its membership is presently constituted, it violates the separation of powers of the three branches of government as prescribed by the Constitution.

As a threshold matter, it is necessary to determine whether the challenges to the composition and powers of the Election Commission are appropriate for judicial review at this time and in this particular action. With respect to 2 U.S.C. § 456, which temporarily disqualifies from candidacy for federal office any person who is found by the Commission to have failed to file a required report, Question 8(e) relating to its validity might best be left to challenge in a concrete case brought by someone who has been subjected to disqualification. However, I believe that the remaining challenges are presently ripe for review.

Plaintiffs assert that they are now pursuing or are about to engage in various political activities which will fall within the provisions of the Act and could possibly result in violations. The Commission's deep involvement in the regulation of political activities is shown by section 437c(b) which provides:

Question 8(c) is also ripe for review at this time.

I find the Commission's argument that only the President has standing to contest an encroachment on executive powers unconvincing. The plaintiffs have a sufficient interest in having their political affairs regulated by a validly constituted commission to maintain this action.

In an attempt to avoid immediate review, the Commission and the Attorney General argue that all civil enforcement matters might be turned over to the Attorney General under section 437g(a)(7). If this happens, it is asserted, no concrete case will ever arise which presents the issue of whether civil enforcement by the Commission violates the constitutional separation of powers. However, section 437g(a)(7) provides that "upon request by the Commission the Attorney General on behalf of the United States *shall* institute a civil action for relief . . . ." (Emphasis added.) The use of the mandatory "shall" quite clearly indicates Congress intended that the Attorney General would have no discretion to determine whether to initiate civil enforcement proceedings when he receives a referral from the Commission. Even if the Commission chooses to refer all cases under this section, it still retains effective control of the civil enforcement powers. The fact that the enforcement authority may be exercised through the Attorney General as a passive intermediary should therefore be irrelevant to determining the ripeness of challenges to the Commission's enforcement powers.

III

Turning to the merits of the various parts of Question 8, the issue before us is whether the Election Commission, as presently appointed, violates the constitutional principle of separation of powers. The Constitution, without explicitly so stating, provides for a separation of the powers of government into legislative, executive and judicial departments. This "object is basic and vital . . . namely, to preclude a commingling of these essentially different powers of government in the same hands." *O'Donoghue v. United States*, 289 U.S. 516, 530 (1933). This method of political organization and operation seeks to safeguard liberty by preventing the concentration of excessive power in any one branch of the government. However, it is not a complete and absolute separation of powers. As Justice Story wrote:

> When we speak of a separation of the three great departments of the government, and maintain that that separation is indispensable to public liberty, we are to understand this maxim in a limited sense. It is not meant to affirm that they must be kept wholly and entirely separate and distinct, and have no common link of connection or dependence, the one upon the other, in the slightest degree. The true meaning is, that the whole power of one of these departments should not be exercised by the same hands which possess the whole power of either of the other departments; and that such exercise of the whole would subvert the principles of a free constitution. This has been shown with great clearness and accuracy by the author of the Federalist. It was obviously the view taken of the subject by Montesquieu and Blackstone in their commentaries; for they were each speaking with approbation of a constitution of government which embraced this division of powers in a general view; but which at the same time established an occasional mixture of each with the others, and a mutual dependency of each upon the others. The slightest examination of the British Constitution will at once convince us that the legislative, executive and judiciary departments are by no means totally distinct and separate from each other.

Story, Commentaries on the Constitution § 525, quoted in 1 *Sutherland, Statutory Construction* § 3.03 (4th ed. Sands 1972). In more recent times, the general view as to the separation of powers was expressed by Chief Justice Taft as follows:

> The Federal Constitution and State Constitutions of this country divide the governmental power into three branches. . . . [T]he rule is . . . in carrying out that constitutional division into three branches it is a breach of the National fundamental law if Congress gives up its legislative power and transfers it to the President, or to the Judicial branch, or if by law it attempts to invest itself or its members with either executive power or judicial power. This is not to say that the three branches are not co-ordinate parts of one government and that each in the field of its duties may not invoke the action of the two other branches in so far as the action invoked shall not be an assumption of the constitutional field of action of another branch. In determining what it may do in seeking assistance from another branch, the extent and character of that assistance must be fixed according to common sense and the inherent necessities of the governmental co-ordination.

J. W. Hampton, Jr. & Co. v. United States, 276 U.S. 394, 406 (1928). Under this interpretation, one department may exercise some powers belonging to other departments when essential to the exercise of its primary functions and when it does not amount to an assumption of the whole power of another department. See *Sutherland, supra*, at § 3.06.

The degree to which the powers must be kept separate or may overlap depends in the final analysis upon applicable constitutional provisions. In this case, we are concerned with determining whether Congress has overstepped the limitations imposed by the Constitution in setting up the Election Commission. Those who defend the Commission and the powers vested in it by the statute contend that it is a branch of the legislature and that Congress is authorized to establish a body which is in many respects responsible to Congress, or to the separate houses of Congress, because the Constitution gives Congress certain powers with respect to elections.

The Commission refers to several provisions of the Constitution as relevant to the congressional power over federal elections. Article I, section 5, provides:

> Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members . . . .

The Twelfth Amendment provides that the certificates of the votes of the electoral college shall be transmitted to the President of the Senate who "shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted." If no person receives a majority, the House chooses the President by ballot. The powers conferred by these provisions are quite limited insofar as the present case is concerned since they focus on the results of elections rather than on their conduct.

The congressional power over the conduct of elections to Congress is directly specified in Article I, section 4, which provides:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Place of Chusing Senators.

Although the Constitution gives the states authority over the manner of appointing electors in presidential elections, see Article II, section 1, *Burroughs & Cannon v. United States*, 290 U.S. 534 (1934), holds that the congressional power to protect the sanctity of elections extends to the selection of presidential electors.[1] Finally, a general grant of power may be inferred from the "necessary and proper" clause of Article I, section 8:

> The Congress shall have Power . . .
>
> . . . . . .
>
> To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

To the extent that the statutes under review regulate and supervise the conduct of federal elections, Congress is within its power in so legislating. However, the method chosen by Congress to accomplish this regulation (i. e. creation of the Federal Election Commission) raises substantial questions as to whether it has appropriated to itself functions constitutionally entrusted to the executive and judicial branches.

Balanced against the congressional powers with respect to elections are other provisions of the Constitution which allocate functions to the executive branch. Article II, section 1, provides:

> The executive Power shall be vested in a President of the United States of America.

By way of elaborating upon the intent as to a portion of the power conferred by this provision, section 3 provides that the President "shall take Care that the Laws be faithfully executed . . . ." Thus the Constitution clearly places the responsibility for executing the laws in the executive branch rather than in Congress. Article III similarly vests the judicial power in the Courts of the United States:

> The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

The Constitution is also specific with respect to the method of appointing federal officers. Article II, section 2, provides that the President

> shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The specific provisions of the statute in question must be evaluated against this constitutional framework.

1. While presidential electors are not officers or agents of the federal government (*In re Green*, 134 U.S. 377, 379), they exercise federal functions under, and discharge duties in virtue of authority conferred by, the Constitution of the United States. The President is vested with the executive power of the nation. The importance of his election and the vital character of its relationship to and effect upon the welfare and safety of the whole people cannot be too strongly stated. To say that Congress is without power to pass appropriate legislation to safeguard such an election from the improper use of money to influence the result is to deny to the nation in a vital particular the power of self protection. Congress, undoubtedly, possesses that power, as it possesses every other power essential to preserve the departments and institutions of the general government from impairment or destruction, whether threatened by force or by corruption.

290 U.S. at 545.

IV

Section 437c(a)(1) establishes the Federal Election Commission which

> is composed of the Secretary of the Senate and the Clerk of the House of Representatives, ex officio and without the right to vote, and six members appointed as follows:
>
> (A) two shall be appointed, with the confirmation of a majority of both Houses of the Congress, by the President pro tempore of the Senate upon the recommendations of the majority leader of the Senate and the minority leader of the Senate;
>
> (B) two shall be appointed, with the confirmation of a majority of both Houses of the Congress, by the Speaker of the House of Representatives, upon the recommendations of the majority leader of the House and the minority leader of the House; and
>
> (C) two shall be appointed, with the confirmation of a majority of both Houses of the Congress, by the President of the United States.

The method of appointment of this Commission clearly violates Article II, section 2, in that four members are nominated by congressional officers rather than the President and the two members who are Presidential appointees are subject to confirmation by "a majority of both Houses of the Congress" rather than "by and with the Advice and Consent of the Senate."

It is argued that the inherent right of both Houses of Congress to appoint their own officers, such as clerks, doorkeepers and other housekeeping personnel, is precedent to justify their appointing the members of this Commission in the manner specified. This comparison is somewhat inapposite since the powers and duties of the Commission are quite different from those related to the day-to-day internal functioning of Congress, over which it unquestionably has complete control.

It is also contended that precedent for the appointment of this Commission in the manner prescribed exists in the act creating the General Accounting Office with a Comptroller General of the United States at its head, accountable in some respects to Congress and subject to impeachment and removal by Congress. 31 U.S.C. § 41 et seq., (42 Stat. 23, June 10, 1921). However, that act provides that the "Comptroller General and an Assistant Comptroller General of the United States . . . shall be appointed by the President with the advice and consent of the Senate." 31 U.S.C. § 42, 42 Stat. 23, c. 18, Title III, § 302, June 10, 1921. Thus the Comptroller General is no precedent for the unique methods chosen for appointing the Election Commission.[2]

2. It is a misstatement for the majority opinion to assert that the so-called certification and audit functions of the Commission are similar to those exercised by the Comptroller General

This is not to say that Congress has no role to play in the appointment of officials to regulate federal elections. Under the 1971 Act, the Secretary of the Senate and the Clerk of the House of Representatives, both legislative officers not appointed under Article II, section 2, were assigned certain duties in connection with the reporting of campaign finances. To the extent that the Commission is performing a similar legislative function, it should not be necessary that its members be appointed in conformity with Article II, section 2.[3] Thus we must determine if the powers vested in the Commission exceed the limits of the powers which may be exercised by the legislative branch under the Constitution.[4] To properly answer this question requires an analysis of the specific provisions of the statute and a determination as to whether any of the powers so granted separately or in the aggregate trespass impermissibly into the executive or judicial fields.

V

The powers of the Election Commission with respect to reporting of contributions and expenditures are specified in section 437d. To the extent that the Commission is empowered to require that candidates for election make reports concerning their financing, to require contributors and political committees to disclose their contributions and expenditures, and to gather and compile this data, the validity of conferring such powers on an appropriate legislative commission is not subject to serious question. Similarly, the power to develop reporting forms and the powers associated with conducting legislative investigations into the implementation of the statute would appear to be proper adjuncts to the congressional power over federal elections. In these areas, the Commission is performing functions analogous to those entrusted to the General Accounting Office. However, the Act confers other duties and responsibil-

under 31 U.S.C. § 65(d). In practice, the General Accounting Office (GAO) does not certify appropriations. That is handled by the Office of Management and Budget, although the GAO does countersign some warrants. Generally the function of the GAO is to conduct a management review as to the efficiency with which appropriations are expended. Thus when the Election Commission acts in this respect, as it is authorized to do (26 U.S.C. §§ 9005, 9007-9), it is acting in the manner that executive departments of the federal government act. Moreover, there is nothing in the instant law to indicate that the normal functions of the GAO do not extend to the operations of the Commission or that Congress was providing for the two bodies to duplicate the same activity.

3. The majority begins its analysis of the validity of the Commission's composition with a discussion of Article II, section 2, designed to show that the legislative branch has power to appoint its own inferior officers to carry out appropriate legislative functions. As I read the instant opinions, no one disagrees with this proposition. My disagreement with the majority arises instead from my conclusion that the powers vested in this Commission are not "appropriate legislative functions."

4. It might be argued that the President's role in nominating a minority of the members of a body performing functions constitutionally delegated to Congress in connection with regulating federal elections impermissibly involves the executive in the activities of the legislative branch. If this were the case, the unique composition of the Commission could result in its being unable to perform any governmental functions. However, the remainder of this discussion will presume that the Commission is a legislative body and thus may properly be vested with legislative duties.

ities on the Commission which are not solely related to constitutional powers conferred upon Congress.

Congress has made numerous attempts to vest the Commission with authority to enforce both the reporting and disclosure provisions and the sections of the Criminal Code which limit contributions and expenditures. Section 437d(a)(6) empowers the Commission

> to initiate (through civil proceedings for injunctive, declaratory, or other appropriate relief), defend, or appeal any civil action in the name of the Commission for the purpose of *enforcing* the provisions of this Act, through its general counsel;

(Emphasis added.) Section 437c(b) is even more specific regarding the Commission's enforcement authority:

> The Commission shall administer, seek to obtain compliance with, and formulate policy with respect to this Act and sections 608, 610, 611, 613, 614, 615, 616, and 617 of Title 18, United States Code. The Commission has primary jurisdiction with respect to the civil enforcement of such provisions.

These two provisions must be read together. The power to "administer, seek to obtain compliance with, and formulate policy," especially with respect to the enumerated sections of the Criminal Code, trespasses directly into the powers conferred by the Constitution upon the executive branch. The same is true of the attempt to give the Commission "primary jurisdiction" to initiate, defend or appeal actions for civil enforcement of the statute. A legislative agency formulating policy on an ad hoc basis with respect to the criminal law and enforcing provisions of the criminal law through civil proceedings would be more than a novel development in American law—it would be an unheard of merger of legislative and prosecutorial powers, which is the precise evil the separation of powers was designed to avoid. The grant of authority to compel compliance with the reporting and disclosure sections similarly intrudes directly into executive functions. The Constitution explicitly allocates to the executive branch the duty to "take care that the laws be faithfully executed." Since the earliest days, the enforcement of the laws in general and the criminal laws in particular has been a primary responsibility of the Executive Department acting through its Attorney General.[5] Whether laws are enforced by civil or criminal action, a delegation of the enforcement power to a legislative agency amounts to an infringement on the power vested in the executive.

Section 437d(a)(9) authorizes the Commission

> to formulate general policy with respect to the administration of this Act and sections 608, 610, 611, 613, 614, 615, 616, and 617 of Title 18, United States Code. . . .

It is not at all clear what is meant by the formulation of "general policy" with respect to the administration of a statute, and especially as related to the administration of the criminal provisions.

5. *See* Ponzi v. Fessenden, 258 U.S. 254 (1922):

> The Attorney General is the head of the Department of Justice. Rev.Stats., § 346. He is the hand of the President in taking care that the laws of the United States in protection of the interests of the United States in legal proceedings and in the prosecution of offences, be faithfully executed. *United States v. San Jacinto Tin Co.*, 125 U.S. 273; *In re Neagle*, 135 U.S. 1; *Kern River Co. v. United States*, 257 U.S. 147; . . .

Id. at 262.

However, insofar as this section authorizes the formulation of policies relating to enforcement of the statute, it clearly constitutes a further infringement of powers vested in the executive branch.[6]

Section 437d(a)(11) empowers the Commission

> to conduct investigations and hearings expeditiously, to encourage voluntary compliance, and to report apparent violations to the appropriate law enforcement authorities.

While investigations and hearings in connection with legislation are certainly proper functions for a congressional organ, an investigation as a preliminary to civil or criminal enforcement of the criminal laws relating to federal elections is not normally a legislative act. Congress' power to investigate "is justified solely as an adjunct to the legislative power." *Watkins v. United States*, 354 U.S. 178, 197 (1957). Thus to the extent that the Act seeks to confer power to investigate preliminary to civil or criminal enforcement of the criminal laws, the broad power to conduct such investigations vested in the Commission exceeds the scope of Congress' constitutional powers over elections. An exception to this would be those relatively rare instances where an investigation relates to a contested election which is to be decided by either or both Houses.

Section 437g, entitled "Enforcement," spells out the details of the Commission's power to enforce the election laws and is perhaps the most extensive intrusion on executive powers. It provides that any person who believes a violation of the reporting and disclosure laws or of the designated criminal statutes has occurred may file a complaint with the Commission. The Commission then has the option of reporting the matter to the Attorney General or making its own investigation. Commission investigations are kept secret unless the object of the investigation consents in writing to disclosure (section 437g(a)(3)). After a hearing is held and the Commission determines there is reason to believe a present or potential violation of the reporting statutes exists, section 437g(a)(5) gives it the following enforcement options:

> [I]t may endeavor to correct such violation by informal methods of conference, conciliation, and persuasion. If the Commission fails to correct the violation through informal methods, it may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which the person against whom such action is brought is found, resides, or transacts business. Upon a proper showing that such person has engaged or is about to engage in such acts or practices, the court shall grant a permanent or temporary injunction, restraining order, or other order.

If it discovers violations of the criminal statutes, or if it is unable to correct other violations under paragraph (5), section 437g(a)(6) states that the Commission "shall refer apparent violations to the appropriate law enforcement authorities. . . ."

This statutory scheme infringes upon the constitutional functions of coordinate branches of government in two ways. As previously discussed, the responsibility for enforcing the laws is an executive function. Empowering an organ of the legislative branch to perform such duties, whether done through civil or criminal action, clearly infringes upon the specific powers conferred by the Constitution on the executive branch. Second, with respect to the Commission's investigation of potential criminal violations, it has been empowered to act in the manner of a grand jury, including the use of broad subpoena and investigative powers and secret proceedings. While it does not hand down formal indictments, a congressional unit, absent an election contest, is not performing a constitutional congressional function when it engages in the business of gathering evidence through preliminary investigations and formally recommending prosecution of criminal offenses. See p. 1618, *supra*.

One of the most serious intrusions on the powers of the executive branch is section 437g(a)(7) which provides in mandatory language that the Attorney General "*shall*" institute civil actions upon request of the Commission:

> Whenever in the judgment of the Commission, after affording due notice and an opportunity for a hearing, any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act or of section 608, 610, 611, 613, 614, 615, 616, or 617 of Title 18, United States Code, upon request by the Commission the Attorney General on behalf of the United States *shall* institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which the person is found, resides, or transacts business. Upon a proper showing that such person has engaged or is about to engage in such acts or practices, a permanent or temporary injunction, restraining order, or other order shall be granted without bond by such court.

(Emphasis added.) The suggestion made at oral argument that "shall" really means "may" is simply not consistent with the explicit language or congressional intent as indicated by the tone of the entire Act. Congress quite clearly intended to deprive the Attorney General of his normal discretion in bringing actions to enforce the laws and reduce him to a mere functionary acting under the control of the Commission. This immediate congressional supervision and control of the exercise of powers constitutionally committed to the executive branch certainly contravenes the constitutional separation of powers.[7]

6. Another broad power exists in section 437(a)(8) which authorizes the Commission

> to make, amend, and repeal such rules, pursuant to the provisions of chapter 5 of Title 5, United States Code, as are necessary to carry out the provisions of this Act;

Obviously the promulgation of rules to implement portions of the Act which infringe upon the separation of powers will simply compound the constitutional violation. While the full import of this section will not be known until the Commission acts to promulgate rules, it has great potential for intrusion on functions not assigned to Congress by the Constitution.

7. The congressional desire to regulate the activities of the Attorney General with respect to enforcing the instant statute is also evidenced by section 437g(b) which provides:

> (b) In any case in which the Commission refers an apparent violation to the Attorney General, the Attorney General shall respond by report to the Commission with respect to any action taken by the Attorney General regarding such apparent violation. Each report shall be transmitted no later than 60 days after the date the Commission refers any apparent violation, and at the close of every 30-day period thereafter until there is final disposition of such apparent violation. The Commission may from time to time prepare and publish reports on the status of such referrals.

While Congress clearly has power to require that executive officers supply information to

Under section 437f, the Commission is required to render advisory opinions

> with respect to whether any specific transaction or activity by such individual, candidate, or political committee would constitute a violation of this act, of chapter 95 or chapter 96 of Title 26 of the U.S.Code, or of section 608, 610, 611, 613, 614, 615, 616, or 617 of Title 18, United States Code.

Any person who relies on such opinions is presumed to be in compliance with the election laws:

> (b) Notwithstanding any other provision of law, any person with respect to whom an advisory opinion is rendered under subsection (a) who acts in good faith in accordance with the provisions and findings of such advisory opinion shall be presumed to be in compliance with the provision of this act, of chapter 95 or chapter 96 of Title 26 of the U.S.Code, or of section 608, 610, 611, 613, 614, 615, 616, or 617 of Title 18, United States Code, with respect to which such advisory opinion is rendered.

2 U.S.C. § 437f(b). Thus the decisions of the Commission will effectively override the decisions of Government prosecutors interpreting the criminal statutes. While advisory opinions by a properly constituted agency would be highly desirable in light of the complexity of the statute, giving such status to advisory opinions issued by a congressional commission is, in my opinion, another impermissible intrusion into the constitutionally conferred powers and duties of the executive branch, i. e. to execute the laws.

The majority opinion cites a portion of the House Report on section 437f(b) which states that "the bill provides for a presumption of compliance; this presumption would be rebuttable, and, therefore, legal action would not be foreclosed." H.Rep. 93–1239, 93d Cong., 2d Sess. 9 (1974). The purpose of section 437f(b) is quite clearly to prevent the Government from obtaining the conviction of someone who can prove he has acted "in good faith and in accordance with the provisions of such advisory opinion" by arguing that the advisory opinion is not a proper interpretation of the statute. Assuming that the statute is to be construed as providing for only a "rebuttable" presumption of compliance with the statute, however, the Government would "rebut" the presumption by showing that the accused's actions were in fact not "in compliance with" the statute he is accused of violating.[8] But this is exactly the showing the Government must make to establish its case against the accused in the absence of any presumption. Thus, unless the presumption of compliance with the Act is a conclusive presumption, arising once the accused establishes his good faith compliance with the advisory opinion, section 437f(b) is simply a nullity. Despite the language in the legislative history, I do not believe this court can so easily assume that the full Congress intended to pass meaningless legislation.

I also believe section 438(c) is invalid. That section prohibits the Commission from issuing rules and regulations without first submitting the proposed language to the affected house, or to both houses in the case of rules applying to presidential candidates, and affording an opportunity for the exercise of a "congressional veto." This provision, applying as it does to the broad policy-making functions of the Commission, implicates Congress itself as well as the Commission in the exercise of those powers discussed above which violate the separation of powers. In addition, to the extent that the regulations may be substantive, as opposed to procedural or mere housekeeping matters, the exercise of a legislative veto by either or both houses arguably violates Article I, section 4, to the extent that it requires congressional regulation of elections to be accomplished "by Law."

Finally, section 456, entitled "Additional enforcement authority," provides:

> (a) In any case in which the Commission, after notice and opportunity for a hearing on the record in accordance with section 554 of Title 5, United States Code makes a finding that a person who, while a candidate for Federal office, failed to file a report required by title III of this Act, and such finding is made before the expiration of the time within which the failure to file such report may be prosecuted as a violation of such title III, such person shall be disqualified from becoming a candidate in any future election for Federal office for a period of time beginning on the date of such finding and ending one year after the expiration of the term of the Federal office for which such person was a candidate.
>
> (b) Any finding by the Commission under subsection (a) shall be subject to judicial review in accordance with the provisions of chapter 7 of Title 5, United States Code.

While this section may not be ripe for review until someone is actually disqualified and appeals, I have no doubt that it must be ultimately held that the disqualification of a candidate from future elections by a legislatively-appointed body like the Commission is improper. Such action, based upon a finding of the Commission that the candidate failed to file a required report, constitutes in effect a trial and the (automatic) imposition of sentence. This is judicial action with a vengeance and infringes upon the judicial power vested in the courts by Article III, section 1.[9]

In light of the various provisions of the statute discussed above, it is my con-

the Commission, this section suggests an intent that the Commission is to play a more active role in assuring that the Attorney General enforces the statutes according to the desires of Congress.

8. One might argue that by calling the presumption "rebuttable," the House Report simply means that the Government could overcome it by showing lack of good faith or failure to comply with the terms of the advisory opinion. If the term has this limited meaning, however, all one need do is postulate a case where the Government is unable to make either showing. In that situation, the presumption comes into play to override any interpretation of the legality of the individual's conduct by either the Attorney General or the court which would conflict with the Commission's advisory opinion. It should follow automatically that vesting this power to override the prosecutor's or the court's interpretation of the law and the facts in a legislative body is unconstitutional.

9. While obviously not a part of the Commission's enforcement powers, section 441 presents an interesting question of congressional intent:

> (a) Any person who violates any of the provisions of this chapter shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.
>
> (b) In case of any conviction under this chapter, where the punishment inflicted does not include imprisonment, such conviction shall be deemed a misdemeanor conviction only.

Since the maximum penalties authorized by subsection (a) do not rise to the dignity of a felony, *see* 18 U.S.C. § 1, it is hard to understand what the purpose of subsection (b) could be.

clusion that the Election Commission has been vested by the statute with duties which under the Constitution are not solely or primarily conferred on the Congress. Nor can it be said that these are powers necessarily exercised by the legislative branch in order to assure the proper performance of its role with respect to federal elections. There has been no showing that vesting the Commission with these broad rule-making, interpretive, policy making, investigatory and enforcement powers is essential to the accomplishment of constitutional congressional objectives. Finally, this intrusion into the powers of the executive and judiciary can in no way be described as minimal. I therefore must conclude that the powers vested in the Election Commission, when considered in light of the manner provided by the statute for the appointment of its members, impermissibly infringes upon the powers constitutionally allocated to other branches of government, and thus the Act violates the separation of powers required by the Constitution. See *Springer v. Government of the Philippine Islands*, 277 U.S. 189 (1928).

The majority describes the Commission's powers as "quasi-executive" or "quasi-judicial." It should be apparent from the foregoing discussion, however, that many of these powers are in fact "executive" or "judicial." The majority itself acknowledges that "some of the provisions—for example, those conferring civil enforcement and candidate disqualification powers on the Commission—raise very serious constitutional questions." (Majority Op. at 1576). I agree wholeheartedly. In political campaigning, even the suggestion of wrongdoing can prove fatal, and this is especially so when the accusation is made by an official organ of the Government. Under such circumstances, I cannot agree with the majority that consideration of "serious constitutional questions" which challenge the Commission's power to even begin to perform various activities should be postponed until these actions are actually taken, at which point a substantial portion of the harm is likely to have already occurred.

VI

The obvious solution to this problem would be for Congress to amend the statute to provide that all members of the Commission shall be appointed in conformity with Article II, section 2. Both the Commission and the Intervening Defendants argue that this procedure would be inconsistent with the purposes of the Act since the members of the Commission would then be obligated to a President who is also the head of his party and who himself may be a candidate for reelection. By the same token, members of Congress are also members of parties and candidates for reelection. However, it is the Constitution that provides the answer to this argument by its requirement that officers appointed by the President under Article II, section 2, be confirmed by the Senate. This provision defines the manner and extent of congressional participation the Framers thought necessary to avoid undue presidential or congressional control over federal officers and preserves the system of checks and balances between the branches of government. In contrast, the present Election Commission is the result of an attempt to evade the constitutional role of the executive as a check on congressional power. Since this court is not empowered to rewrite the statute, however, we are limited to striking down those portions of the Commission's duties

and responsibilities which infringe upon the powers of the executive and judicial branches.[10]

As previously indicated, I believe that the powers vested in the Commission, other than its authority to collect and compile reports of contributions and expenditures and its duties incidental thereto, involve the exercise of powers beyond those allocated to the legislative branch by the Constitution. Thus I would answer Questions 8, 8(a) and 8(c) in the affirmative, and Questions 8(b) and 8(d) in the affirmative to the extent the powers involved relate to functions other than the collection of reports. In my opinion, Question 8(e) must also ultimately be answered in the affirmative although it may not presently be ripe for review.

Subject to the exceptions discussed above, I otherwise join in the responses to the certified constitutional questions contained in the court's order entered today.

10. Arguably, since the Commission has been vested with executive powers, the failure to appoint its members in compliance with Article II, section 2, has resulted in those members failing to meet the "qualification" requirement of section 315(b) of Pub.L. 93-443:

> (b) Until the appointment and qualification of all the members of the Federal Election Commission and its general counsel and until the transfer provided for in this subsection, the Comptroller General, the Secretary of the Senate, and the Clerk of the House of Representatives shall continue to carry out their responsibilities under title I and title III of the Federal Election Campaign Act of 1971 as such titles existed on the day before the date of enactment of this Act.

If so, the clearly legislative functions would continue to be performed by these three designated officials and the formulation of policy and enforcement of the criminal provisions would be left to the executive branch in the same manner as with all other criminal statutes.

Adm. Office, U.S. Courts—West Publishing Company, Saint Paul, Minn.

UNITED STATES COURT OF APP
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 75-1061

September Term, 1974
Civil Action 75-0001

James L. Buckley, United States Senator from the State of New York, et al., Plaintiffs

v.

Honorable Francis R. Valeo, Secretary, United States Senate, et al., Defendants

Center for Public Financing of Elections et al., James C. Calaway of Houston Texas, Intervenors

United States Court of Appeals
for the District of Columbia Circuit

FILED AUG 29, 1975

HUGH E. KLINE
CLERK

ORDER

It is ORDERED by the Court *sua sponte* that the opinion of August 15, 1975 in the above entitled case is amended as follows:

Page 1506, first column, delete

TAMM, Circuit Judge, filed a separate opinion, joined in by WILKEY, Circuit Judge, dissenting from Parts IV, VI, and VII of the per curiam opinion

and insert in place thereof

TAMM, Circuit Judge, joined by WILKEY, Circuit Judge, dissenting from the per curiam

opinion, and concurring in the result only of Part V.

Per Curiam
For the Court
Hugh E. Kline, Clerk
/s/ Robert A. Bonner
By: Robert A. Bonner,
Chief Deputy Clerk

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

JAMES L. BUCKLEY
EUGENE J. McCARTHY
WILLIAM A. STEIGER
STEWART R. MOTT
COMMITTEE FOR A CONSTITUTIONAL PRESIDENCY — McCARTHY '76
CONSERVATIVE PARTY OF THE STATE OF NEW YORK
MISSISSIPPI REPUBLICAN PARTY
LIBERTARIAN PARTY
NEW YORK CIVIL LIBERTIES UNION, INC.
AMERICAN CONSERVATIVE UNION
CONSERVATIVE VICTORY FUND
HUMAN EVENTS, INC.,

Plaintiffs,

and

JAMES CALAWAY

Intervening Plaintiff,

v.

FRANCIS R. VALEO, et al.,

Defendants,

and

CENTER FOR PUBLIC FINANCING OF ELECTIONS, *et al.*,

Intervening Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the plaintiffs hereby appeal to the Supreme Court of the United States from all of the decision of this Court entered on August 15, 1975, except paragraphs 1, 2 and 7 (e) of the Court's Order and that

portion of paragraph 9 which deals with 2 U.S.C. § 437a. This appeal is taken pursuant to 2 U.S.C. § 437h (b).

Respectfully submitted,

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Attorneys For Plaintiffs

August 21, 1975

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-437

JAMES L. BUCKLEY, EUGENE J. McCARTHY, WILLIAM A. STEIGER, STEWART R. MOTT, COMMITTEE FOR A CONSTITUTIONAL PRESIDENCY–McCARTHY '76, CONSERVATIVE PARTY OF THE STATE OF NEW YORK, LIBERTARIAN PARTY, MISSISSIPPI REPUBLICAN PARTY, NEW YORK CIVIL LIBERTIES UNION, INC., AMERICAN CONSERVATIVE UNION, CONSERVATIVE VICTORY FUND, HUMAN EVENTS, INC.,

Appellants,

v.

FRANCIS R. VALEO, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JURISDICTIONAL STATEMENT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No.

JAMES L. BUCKLEY, EUGENE J. McCARTHY, WILLIAM A. STEIGER, STEWART R. MOTT, COMMITTEE FOR A CONSTITUTIONAL PRESIDENCY–McCARTHY '76, CONSERVATIVE PARTY OF THE STATE OF NEW YORK, LIBERTARIAN PARTY, MISSISSIPPI REPUBLICAN PARTY, NEW YORK CIVIL LIBERTIES UNION, INC., AMERICAN CONSERVATIVE UNION, CONSERVATIVE VICTORY FUND, HUMAN EVENTS, INC.,

Appellants,

v.

FRANCIS R. VALEO, *et al.*,

Appellees.

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

JURISDICTIONAL STATEMENT

Appellants James L. Buckley, *et al.*, appeal from a judgment and order of the United States District Court for the District of Columbia, sitting with three judges, denying injunctive relief sought against the operation and effect of the Revenue Act of 1971, Public Law 92-178, 85 Stat. 497, as amended by Public Law 93-53, 87 Stat. 134, and as further amended by the Federal Election Campaign Act Amendments of 1974, 26 U.S.C. §§ 9001 *et seq.*, codified as Subtitle H of the Internal Revenue Code of 1954 (Subtitle H).

JUDGMENT AND OPINIONS BELOW

The judgment of the District Court entered August 15, 1975, is printed as Appendix A hereto. The District Court adopted portions of a decision of the United States Court of Appeals for the District of Columbia Circuit (*en banc*), also entered August 15, 1975, in *Buckley v. Valeo*, No. 75-1061. The judgment and opinions of that Court are printed as Appendix A to appellants' Jurisdictional Statement in their appeal, filed today, from that Court's decision.

JURISDICTION

Appellants commenced this action in the United States District Court for the District of Columbia seeking injunctive and declaratory relief against the operation and effect of Subtitle H and other statutes (to wit, the Federal Election Campaign Act of 1971, as amended by the Federal Election Campaign Act Amendments of 1974). The entire case was certified by the District Court to the Court of Appeals for the District of Columbia Circuit, sitting *en banc*. *Buckley* v. *Valeo*, 387 F. Supp. 135 (1975). That Court remanded the case to the District Court for fact finding, definition of constitutional questions, and recertification. All the constitutional questions, including those relating to Subtitle H, were recertified to the Court of Appeals by the District Court; but the District Court, acting pursuant to a suggestion made by the Court of Appeals (App. I-82)[1], also constituted itself as a District Court of three judges to hear and determine, concurrently with the Court of Appeals, the Subtitle H issues. This was done to ensure jurisdiction by this Court on appeal.[2] The judgment and order of the

[1] Vol. I of the Appendix herein.

[2] Doubt arose as to the proper jurisdiction for Subtitle H issues because of the wording of 2 U.S.C. § 437h, a part of the Federal Election Campaign Act Amendments of 1974, which provides for decision by the Court of Appeals *en banc* of questions certified to it by the District Court concerning the "constitutionality of this Act" or of certain sections of Title 18, U.S.C. Since Subtitle H is not especially mentioned in Section 437h, the question was whether the proper route to this Court with respect to Subtitle H issues ran through the Court of Appeals under Section 437h or through a three-judge District Court under the jurisdictional provisions cited in the text. Both routes have now been followed, placing the issues before this Court regardless of which route was correct.

District Court were filed on August 15, 1975, as was the decision of the Court of Appeals. Appellants filed their Notice of Appeal to this Court on August 21, 1975 (Appendix B).

If the Court of Appeals did not have jurisdiction over the constitutional challenge to Subtitle H (see n. 2, *supra*), then the District Court of the District of Columbia had jurisdiction over that challenge by virtue of 26 U.S.C. § 9011(b) and 28 U.S.C. §§ 2282, 2284, and this Court has jurisdiction over this appeal by virtue of 28 U.S.C. §§ 1253, 2101.

STATUTE INVOLVED

The statute involved in this appeal is Subtitle H of the Internal Revenue Code of 1954, Public Law 92-178, 26 U.S.C. §§ 9001 *et seq.*, as amended by Public Law 93-53, 87 Stat. 134, and as further amended by the Federal Election Campaign Act Amendments of 1974, Public Law 93-443.

The text of Subtitle H is contained at pp. 61-80 of the Senate print entitled *Federal Election Campaign Laws*, filed today as Volume III of the Appendix herein.

QUESTION PRESENTED

Did the District Court correctly conclude that the provisions of Subtitle H of the Internal Revenue Code are constitutional?

STATEMENT OF THE CASE

A complete statement of the procedural history of this case is contained in the Statement of the Case in the Jurisdictional Statement filed today by appellants in their appeal from the Court of Appeals' decision. That part of the Court of Appeals' decision which dealt with the challenge to Subtitle H was incorporated by the District Court in its judgment and order of August 15, 1975. Appellants incorporate herein the Statement of the Case in the Jurisdictional Statement filed in conjunction with the appeal taken from the decision of the Court of Appeals.

THE QUESTION IS SUBSTANTIAL

A statement of the importance of the question presented respecting the constitutional challenge to Subtitle H appears at pp. 9, 11 of the Jurisdictional Statement filed in appellants' appeal from the Court of Appeals' decision. Appellants incorporate that discussion herein.

As there shown, the federal financing of partisan political activity of some — but not all — aspirants and parties involved in presidential electoral politics raises serious and fundamental questions about the role of government in politics. The mechanisms devised by the Congress in Subtitle H for federal funding of presidential electoral activity constitute an unconstitutional "establishment" of the Democratic and Republican parties and invidiously discriminate against minor and third parties and independent candidates for President. These mechanisms, if sustained, will have incalculable but profound impact on the 1976 and every subsequent presidential election.

CONCLUSION

Probable jurisdiction should be noted, or, in the alternative, the appeal should be set for argument with the question of jurisdiction postponed to a consideration of the merits.

Respectfully submitted,

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Attorneys for Appellants

September 19, 1975

CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of September, 1975, pursuant to Rules 33(1) and 33(3)(b) of the Rules of this Court, served all parties required to be served by causing three copies of the Jurisdictional Statement to be mailed first class, postage prepaid, to the following persons:

The Honorable Robert H. Bork
Solicitor General
Department of Justice
Washington, D.C. 20530

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BRICE M. CLAGETT

September 19, 1975

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES L. BUCKLEY, *et al.*,
Plaintiffs,

v. CIVIL ACTION NO. 75-0001

THE HONORABLE FRANCIS R. VALEO, *et al.*,
Defendants.

JUDGMENT

This action, wherein the plaintiffs seek a declaratory judgment respecting and an injunction restraining the enforcement or operation of provisions of Subtitle H of the Internal Revenue Code of 1954 on grounds of repugnance to the Constitution of the United States, having been heard on the entire record and on the briefs and oral arguments of counsel; and

This Court having considered the constituional questions raised with respect to said provisions in light of the evidence submitted and the findings of fact made herein, and having also considered the opinion of the United States Court of Appeals for the District of Columbia Circuit and the separate opinions of judges thereof this date filed in No. 75-1061, *Buckley v. Valeo,* a proceeding leading to resolution by that Court of the same Subtitle H questions as well as constitutional questions pertaining to other Acts of Congress; and

This Court now adopting in toto, as a delineation of its views, the portions of the opinion of that Court which either answer the Subtitle H questions or conclude that such questions are unripe for judicial determination;

It is, this 15th day of August, 1975,

ADJUDGED and ORDERED by this Court that, for the reasons stated in the portions of the opinion of the United States Court of Appeals for the District of Columbia Circuit in *Buckley v. Valeo, supra,* addressing them, the questions which this Court is called upon to consider in connection with Subtitle H of the Internal Revenue Code of 1954 be and hereby are answered as follows:

1. Does § 9011(b) of the Internal Revenue Code of 1954, *as amended,* 26 U.S.C. § 9011(b), in the context of this action, require courts of the United States to render advisory opinions in violation of the "case or controversy" requirement of Article III, § 2, of the Constitution of the United States?

Answer: NO

2. Has each of the plaintiffs alleged sufficient injury to his constitutional rights enumerated in the following questions to create a constitutional "case or controversy" within the judicial power under Article III?

Answer: YES, SUBJECT TO CONSIDERATIONS OF RIPENESS

3. Does any statutory limitation, or do the particular limitations in the challenged statutes, on the amounts that individuals or organizations may contribute or expend in connection with elections for federal office violate the rights of one or more of the plaintiffs under the First, Fifth, or Ninth Amendment or the Due Process Clause of the Fifth Amendment of the Constitution of the United States?

(a) Does § 9008 of the Internal Revenue Code of 1954 violate such rights, in that it limits the

expenditures of the national committee of a party with respect to presidential nominating conventions? (FAC ¶¶ 59, 60, 61, 62, 63, 64, 65, 86).

Answer: NO

(b) Does § 9012 of the Internal Revenue Code of 1954 violate such rights, in that it provides that the government may bring criminal prosecutions against anyone who violates or is about to violate the provisions recited in that section? (FAC ¶¶ 78, 86, 87, 88).

Answer: UNRIPE FOR RESOLUTION

4. (a) Does any statutory limitation, or do the particular limitations in the challenged statutes, on the amounts that candidates for elected federal office may expend in their campaigns violate the rights of one or more of the plaintiffs under the First or Ninth Amendment or the Due Process Clause of the Fifth Amendment?

Answer: NO

(b) Does § 9012 of the Internal Revenue Code of 1954 violate such rights, in that it provides that the government may bring criminal prosecutions against anyone who violates or is about to violate the provisions recited in that section? (FAC ¶¶ 78, 86, 87, 88).

Answer: UNRIPE FOR RESOLUTION

5. Does any statutory provision for the public financing of political conventions or campaigns for nomination or election to the Presidency or Vice Presidency violate the rights of one or more of the plaintiffs under the First or Ninth Amend-

ment, the Due Process Clause of the Fifth Amendment, or Article I, Section 8, Clause 1, of the Constitution of the United States? (FAC ¶¶ 79, 80, 81, 82, 86, 87, 88).

Answer: NO

6. Do the particular provisions of Subtitle H of the Internal Revenue Code of 1954 deprive one or more of the plaintiffs of such rights under the First or Ninth Amendment or Article I, Section 8, Clause 1, in that they provide federal tax money to support certain political candidates, parties, movements, and organizations or in the manner that they so provide such federal tax money? (FAC ¶¶ 79, 80, 81, 82, 86, 87, 88).

Answer: NO

7. Do the provisions in the challenged statutes concerning the powers and method of appointment of the Federal Election Commission violate the rights of one or more of the plaintiffs under the constitutional separation of powers, the First, Fourth, Fifth, Sixth, or Ninth Amendment, Article I, Section 2, Clause 6, Article I, Section 5, Clause 1, or Article III?

Answer: NO

Does § 9008 of the Internal Revenue Code of 1954 violate such rights, in that it empowers the Federal Election Commission to authorize expenditures of the national committee of a party with respect to presidential nominating conventions in excess of the limits enumerated therein?

Answer: NO

8. Do Internal Revenue Code of 1954 §§ 9002(2), (9); 9006(d); 9008(d)(3); 9032(2), (4), (8), and (9), and 9037 violate the constitutional rights of one or more of the plaintiffs that they are excessively vague? (FAC ¶¶ 85, 87, 88).

Answer: NO as to §§ 9002(2), 9008(d)(3); 9032(2)(2), (4).

UNRIPE FOR RESOLUTION as to §§ 9002(9), 9006(d), 9032(8), and (9), 9037.

and it is further

ADJUDGED and DECLARED by this Court that the provisions of Subtitle H challenged in this action, which, as hereinbefore identified, are ripe for judicial determination are consistent with the Constitution of the United States; and it is further

ADJUDGED and ORDERED by this Court that the plaintiffs be and hereby are denied the injunctive relief sought with respect to said provisions; and it is further

ADJUDGED and ORDERED by this Court that this action in all other respects be and hereby is dismissed.

/s/ David L. Bazelon
United States Circuit Judge

/s/ Spottswood W. Robinson, III
United States Circuit Judge

/s/ Howard F. Corcoran
United States District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES L. BUCKLEY
EUGENE J. McCARTHY
WILLIAM A. STEIGER
STEWART R. MOTT
COMMITTEE FOR A CONSTITUTIONAL PRESIDENCY — McCARTHY '76
CONSERVATIVE PARTY OF THE STATE OF NEW YORK
MISSISSIPPI REPUBLICAN PARTY
LIBERTARIAN PARTY
NEW YORK CIVIL LIBERTIES UNION, INC.
AMERICAN CONSERVATIVE UNION
CONSERVATIVE VICTORY FUND
HUMAN EVENTS, INC.,
Plaintiffs,

and

JAMES CALAWAY
Intervening Plaintiff,

v.

FRANCIS R. VALEO, *et al.*,
Defendants,

and

CENTER FOR PUBLIC FINANCING OF ELECTIONS, *et al.*,
Intervening Defendants.

CIVIL ACTION

No. 75-0001

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the Plaintiffs hereby appeal to the Supreme Court of the United States from the judgment and order of this Court, entered August 15, 1975 (except Paragraphs 1 and 2 thereof). The appeal is taken pursuant to 28 U.S.C. §§ 1253 and 2101.

Respectfully submittted,

BRICE M. CLAGETT
JOHN R. BOLTON
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Attorneys For Plaintiffs

August 21, 1975

75-436
75-437

Supreme Court, U.S.
FILED
SEP 19 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

Nos. and

JAMES L. BUCKLEY, *et al.*,

Appellants,

v.

FRANCIS R. VALEO, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JOINT APPENDIX (VOL. I) PLEADINGS AND ORDERS

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APPENDIX

Docket Entries in the United States District Court for the District of Columbia

DATE	PROCEEDINGS
1975	
Jan 2	Complaint, appearance
Jan 2	Summons, copies (6) and copies (6) of complaint issued #1 Ser. 1/9/75 #2 Ser. 1/7/75 #3 Ser. 1/8/75 AG 1/3/75 DA 1/7/75 #5 Ser. 1/7/75 & 1/9/75
Jan 2	APPLICATION of pltfs. for convening of Three-Judge Court; P & A's; c/s 1/2/75.
Jan 2	MOTION of pltfs. to reduce time for defts. to answer from 60 days to 30 days; c/s 1/2/75.
Jan 16	OPPOSITION by defts. to motion by pltfs. to reduce time for defts. to answer; P & A's; c/m 1/16/75.
Jan 16	MOTION of defts. to dismiss; P & A's in support of motion to dismiss and in opposition to application of plfts. for Three-Judge Court; appendices A, B, C; c/m 1/16/75.
Jan 16	OPPOSITION by defts. to application by pltfs. for Three-Judge Court; c/m 1/16/75.
Jan 24	ORDER denying application of plaintiffs for Three-Judge Court and directing Clerk to transmit entire file to Clerk of Court of Appeals for this Circuit. (N) Corcoran, J.
Jan 24	RECEIPT from U.S.C.A. of entire file and cer-

tified copy docket entries pursuant to order of Jan. 24, 1975.

Apr 14 COPY of order of U.S.C.A. remanding record to U.S.D.C. to the extent indicated in attached memorandum; record to be returned to U.S. C.A. as soon as possible, but no later than May 19, 1975; deferring motion to dismiss pending return of record; Memorandum attached. (file received Apr. 17, 1975)

Apr 15 REQUEST to Chief Judge of the Court of Appeals for convening of Three-Judge Court.
Corcoran, J.

Apr 15 DESIGNATION of the Hon. Chief Judge David L. Bazelon and The Hon. Spottswood W. Robinson, III, United States Circuit Judge, to serve with The Hon. Howard F. Corcoran, United States District Judge, as members of the Court to hear and determine this action.
(N) Bazelon, C.J., U.S. C.A.

Apr 17 APPEARANCES of William T. Lake, Lloyd N. Cutler and Paul J. Mode, Jr. for intervening defts. #1, 3, 4, 5, 6, 7, 8, 9, 11. CD/N

Apr 16 STATUS CALL (Motion of James C. Calaway to intervene as party pltf. granted. OTBP
(Rep: Joan Blair) Corcoran, J.

Apr 16 APPEARANCE of John R. Bolton for pltfs.

Apr 16 APPEARANCE of Ralph R. Winter, Jr. for pltfs. (127 Wall St., New Haven, Conn)

Apr 16 APPEARANCE of Arthur F. Fergenson for pltfs.

Apr 16 APPEARANCE of Al J. Daniel, Jr. for James C. Calaway, intervenor-pltf.

Apr 16 APPEARANCE of Stuart Nelkin for intervenor pltf. James Calaway. (4635 Southwest Freeway, Suite 320 W. Houston, Texas)

Apr 16 APPEARANCE of David J. Anderson and Dennis G. Linder, Dept. of Justice for federal defts.

Apr 16 APPEARANCE of Fred M. Wertheimer for intervenor defts. John Gardner and Common Cause.

Apr 16 APPEARANCE of Kenneth J. Guido, Jr. for intervening deft. John Gardner and Common Cause.

Apr 21 ANSWERS by pltfs. to interrogatories; c/s 4/18/75. (fiat) Corcoran, J.

Apr 22 INTERROGATORIES by deft.-intervenors Common Cause & John W. Gardner to pltfs.; c/s 4/22/75.

Apr 21 ORDER granting leave to United States Senator Lee Metcalf to file brief amicus curiae and to participate in oral arguments.
(N) Corcoran, J.

Apr 21 APPEARANCE of Lee Metcalf, pro se and appearance of C. Roger King as attorney for Sen. Metcalf. (1121 Dirksen Senate Office B.)

Apr 23 PROPOSED framing of the Constitutional issues in this action by pltffs.; Addendum 1 & 2; c/s 4/23/75.

Apr 23 PROPOSED statement of Constitutional issues by intervening defts. c/s 4/23/75.

Apr 23 STATEMENT of constitutional questions by defts.; c/s & c/m 4/23/75.

Apr 24 NOTICE by deft-intervenors, Common Cause and John W. Gardner to take deposition of Daniel Joy; attachment; c/s 4/24/75.

Apr 24 OPPOSITION by pltfs. to interrogatories propounded by intervening defts. Common Cause and John W. Gardner; attachment; c/s & c/m 4/24/75.

Apr 24 INTERROGATORIES by pltfs. to defts. and intervening defts.; c/s 4/24/75.

Apr 24 REQUEST by pltfs. for production of documents; c/s 4/24/75.

Apr 23 COMPLAINT of James C. Calaway as pltf-intervenor; c/m 3/10/75.

Apr 25 ORDER designating Judge Howard F. Corcoran to identify constitut. issues; take action and report to Three Judge panel.
(N) Corcoran, J., Bazelon, J., Robinson, J.

Apr 28 PROPOSED statement of constitutional issues by intervening pltf. James Calaway; c/m 4/25/75.

Apr 28 RESPONSE by federal defts. to proposed framing of the constitutional issues by pltfs.; c/s & c/m 4/28/75.

Apr 28 RESPONSE by pltfs. to proposed statement of constitutional issues by defts. and intervening defts.; Exhibit A; c/s & c/m 4/28/75.

Apr 28 REPLY by intervening defts. to proposed framing of the issues by pltfs.; Appendix A; c/s & c/m 4/28/75.

Apr 29 RESPONSE of defts. and intervening defts. to statement by pltfs. as to facts which should be found by Court; c/s & c/m 4/29/75.

Apr 30 RESPONSE by Common Cause to request by pltfs. for production of documents; c/s 4/29/75.

Apr 30 RESPONSE by Common Cause and John Gardner, intervening defts., to interrogatories by pltfs.; Attachments A thru D; c/s 4/29/75.

May 2 DEPOSITION of J. Daniel Mahoney for Common Cause.

May 2 DEPOSITION of Stewart Mott for Common Cause.

May 2 DEPOSITION of David A. Keene for Common Cause.

May 2 DEPOSITION of Eugene J. McCarthy for Common Cause w/Exhibit.

May 2 DEPOSITION of Thomas S. Winter for Common Cause.

May 2 DEPOSITION of Edward H. Crane, III w/Exhibit for Common Cause.

May 2 DEPOSITION of Clarke Reed for Common Cause.

May 2 DEPOSITION of Mary T. Monroe for Common Cause.

May 2 DEPOSITION of James C. Roberts for Common Cause w/Exh. 1 thru 9; 11, 12, 13.

May 2 SUPPLEMENTAL affidavit by pltfs. in support of response by pltfs.; Affidavit of Max Palevsky; c/s 5/2/75.

May 5 NOTICE by intervening defts., Common Cause & John W. Gardner to take deposition of Max Palevsky; c/s & c/m 5/2/75.

May 6 REQUEST by pltfs. for production of documents to Common Cause; c/m 5/6/75.

May 7 RESPONSE by deft-intervenors, Common Cause and John W. Gardner to request by pltfs. for production of documents; c/s & c/m 5/7/75.

May 8 DEPOSITION of James L. Buckley for Common Cause.

May 8 DEPOSITION of Ira Glasser for Common Cause.

May 8 DEPOSITION of William A. Steiger for Common Cause.

May 8 DEPOSITION of Laura Wertheimer for Common Cause.

May 8 DEPOSITION of Roland J. Cole for Common Cause.

May 8 DEPOSITION of Harry M. Fox for Common Cause.

May 8 DEPOSITION of Roland J. Cole (pages 135-348 Day Session) for Common Cause.

May 8 DEPOSITION of Roland J. Cole (pages 349-456 Evening Session) for Common Cause.

May 8 DEPOSITION of Leon J. Weil for Common Cause.

May 8 DEPOSITION of Daniel Joy for Common Cause.

May 8 LETTER, dated 5/6/75, from Dennis G. Linder to Judge Corcoran.
(fiat) Corcoran, J.

May 12 EXHIBIT 1 to deposition of Roland J. Cole filed May 8, 1975.

May 12 EXHIBITS (5) to deposition of Stewart Mott filed May 2, 1975.

May 12 EXHIBITS (1, 2, 3, 4, 5, 6, 9, 14, 15, 18, 23) to deposition of Eugene McCarthy filed May 2, 1975.

May 12 EXHIBIT No. 2 to deposition of Roland J. Cole filed May 8, 1975.

May 12 EXHIBITS (2) to deposition of Clarke Reed filed May 2, 1975.

May 12 EXHIBIT No. 1 to deposition of David A. Keene filed May 2, 1975.

May 12 EXHIBITS (7) to deposition of Daniel Joy filed May 8, 1975.

May 12 EXHIBITS (12) to deposition of Daniel Mahoney filed May 2, 1975.

May 12 MOTION of intervening deft., Susan B. King for substitution of parties; c/s & c/m 5/12/75.

May 13 TRANSCRIPT OF PROCEEDINGS, April 16, 1975, pages 1-32. Court's copy.
Reporter: Joan Curtis Blair

May 14 CERTIFICATE of service by pltfs. of copy of first amended complaint on John G. Murphy, Jr., Esq., General Counsel, Federal Election Commission by hand delivery on 5/14/75.
(fiat) Corcoran, J.

May 14 RESPONSE by Common Cause (10 Vols. 1972 Election Printouts) to request by pltfs. for production of documents.

May 14 ORDER substituting Louise D. Wides as intervening defendant instead of Susan B. King.
(N) Corcoran, J.

May 19 PART I: Findings of Fact agreed to by the parties. (N) Corcoran, J.

May 19 PART II: Statistical Findings of Fact.
(N) Corcoran, J.

May 19 Part III: Court Findings of Fact.
(N) Corcoran, J.

May 19 PART IV: Constitutional questions.
(N) Corcoran, J.

May 19 MEMORANDUM and order adopting findings of fact agreed to by the parties; adopting statistical findings of fact; certifying constitutional questions to the Court of Appeals and directing Clerk of U.S.D.C. to return augmented record to Clerk of U.S.C.A. forthwith.
(N) Corcoran, J.

May 19 RECEIPT from U.S.C.A. of entire file (two volumes), including depositions, transcripts and exhibits and a certified copy docket entries pursuant to forthwith order of May 19, 1975.

May 28 ORDER adopting certain findings submitted to the en banc court and framing certain constitutional issues the three-judge District Court will be called to decide Appendix A. (See Order for details)
(N) Corcoran, J.

May 28 ORDER joining argument in this case with argument in Buckley V. Valeo, No. 75-1061 (D.C. Cir.; to be heard by this court sitting with U.S.C.A. for D.C. Circuit en banc in the courtroom of U.S.C.A. at 9:30 am 6-13-75.
(N) Corcoran, J.

Jun 2 BRIEF for defts. Attorney General and Federal Election Commission; c/s & c/m 6/2/75.

Jun 2 BRIEF of intervening defts. on certified constitutional questions; Exhibit; c/s & c/m 6/2/75.

Jun 2 BRIEF of the plaintiffs (copy) w/Appendix A; c/s & c/m 6/2/75. (original filed in U.S.C.A. #75-1061)

Jun 3 BRIEF amicus curiae of Senator Lee Metcalf; c/m 6/3/75. (original filed in U.S.C.A. #75-1061)

May 29 ORDER directing parties to file three copies of all briefs as to Subtitle H with the Clerk of this Court and the Clerk of U.S.C.A. and granting parties until 2:00 P.M., 6/10/75, to file any additional briefs as to any issue pending before this Court.
(N) Bazelon, J., S. Robinson, J., Corcoran, J.

Jun 5 APPEARANCE of John G. Murphy, Jr. for deft. Federal Election Commission.

Jun 5 BRIEF of Federal Elections Commission.

Jun 5 BRIEF of Attorney General.

Jun 6 ORDER that oral argument adhere to provision of order of U.S.C.A. No. 75-1061 on 6/6/75.
Bazelon, J., S. Robinson, J., Corcoran, J.

Jun 12 COPY of response by pltfs. to amicus curiae motion by Senator Metcalf re time for oral argument; c/s 6/12/75. (orig. filed in U.S.C.A. #75-1061)

Jun 12 COPY of reply brief by pltfs.; Appendices (4); c/s 6/12/75. (orig. filed in U.S.C.A. #75-1061)

Jun 12 REPLY brief of intervening defts. on certified constitutional questions; c/s & c/m c/12/75.

Jun 12 DEPOSITION of Max Palevsky for defts. w/ exhibits.

Jun 12 REPLY brief for the Federal Election Commission.

Jun 13 TRIAL on the merits consolidated with en banc hearing in U.S.C.A. No. 75-1061 argued and taken under advisement.
(Reporter: Steven Miller, Hoover Reporting Co.) Bazelon, J., S. Robinson, J., Corcoran, J.

Jun 13 REPLY brief for defts., Attorney General and Federal Election Commission; c/s 6/12/75.

Jun 25 APPLICATION by pltfs. for temporary restraining order; P & A's; table of authorities; c/s & c/m 6/25/75.

Jun 25 APPLICATION by pltfs. for preliminary injunction; Memorandum; table of authorities; affidavit of Arthur F. Fergenson; c/s & c/m 6/25/75.

Jun 26 WITHDRAWAL of motion for temporary restraining order and for preliminary injunction w/o prejudice per atty. for pltfs.

Jul 24 TRANSCRIPT OF PROCEEDINGS; 6-13-75; pages 1-171; Courts copy; (Rep: S. Miller)
(Hoover Reporting Company, Inc.)

Aug 15 ORDER confirming action and report of Judge Howard F. Corcoran of 5-28-75 (N).
Bazelon, J., S. Robinson, III, J., Corcoran, J.

Aug 15 JUDGMENT answering certain questions in connection with Subtitle H of the Internal Revenue Code of 1954; making certain findings; denying injunctive relief sought by the pltffs and dismissing cause (N).
Bazelon, J., S. Robinson, III, J. Corcoran, J.

Aug 18 CERTIFIED copy Order USCA dated 8-15-75 amending opinion filed 8-15-75.

Aug 18 CERTIFIED copy of opinion from U.S.C.A., dated 8-15-75.
(Fiat) Corcoran, J.

Aug 18 COPY of First Amended complaint for declaratory and injunctive relief c/s 2-7-75
(Fiat) Corcoran, J.

Aug 19 ORDER certifying and transmitting Certified copy of Memorandum and Order, including Parts I-IV as part of any record on appeal.
(N) Corcoran, J.

Aug 21 NOTICE of appeal to the Supreme Court by pltfs. from order of August 15, 1975; c/s 8-21-75. $5.00 paid and credit to U.S. by Ryan.

Aug 21 REQUEST by pltfs. to certify record to Supreme Court.

Docket Entries in the United States Court of Appeals for the District of Columbia Circuit

DATE	FILINGS – PROCEEDINGS
1975	
Jan 24	Certified Original Record from the United States District Court (Certified to this Court pursuant to Title 2 Section 315 (a)
Jan 29	10 - Plaintiffs' response to motion to dismiss and opposition to application for a three-judge court filed in the U.S. District Court for the District of Columbia
Jan 29	10 - Plaintiffs' opposition to motion to dismiss
Jan 31	10 - Motion of The Center for Public Financing of Elections, et al., for leave to Intervene
Feb 7	10 - Plaintiffs' first amended complaint for declaratory and injunctive relief
Feb 19	Per Curiam order that this matter is preliminarily deemed to have been properly certified to this Court by the District Court below, pursuant to Section 315 (a) of the Federal Election Campaign Act, as amended; This Court shall proceed to consider the instant matter en banc pursuant to Section 315 (a), 28 U.S.C. §46 (c) and Rule 35 (a), Fed. R. App. P.; the Clerk inquire of each of the parties by letter as to their expectations regarding the need for the taking of evidence, or the hearing of witnesses, so that appropriate procedures may be considered for adoption by the Court; the parties file additional

memoranda and/or briefs on the jurisdictional questions (including both the motion to remand and the motion to dismiss) according to the following schedule: Defendants – shall file 20 days of the entry of this order; Plaintiffs – shall file their answering papers within 15 days thereafter; Defendants – a reply, if any, shall be filed within 5 days; the Clerk shall thereafter schedule oral argument on all jurisdictional contentions; CJ Bazelon; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon, Robb and Wilkey, CJ

Feb 11 4 - Defendants' motion for remand and suggestion for further proceedings

Feb 27 Per Curiam order that the Center for Public Financing of Elections Common Cause, the League of Women Voters of the U.S., Chellis O'Neal Gregory, Norman P. Jacknis, Susan B. King, Daniel R. Noyes, Mrs. Edgar B. Stern, Charles P. Taft, John W. Gardner, and Ruth Clusen are granted leave to intervene under Rule 24 Fed. R. Civ P. and Shall conduct themselves according to the briefing schedule in the order entered by this Court on February 19, 1975; CJ Bazelon; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon, Robb and Wilkey, CJ

Mar 4 4 - Intervenor's Proposed procedures

Mar 4 4 - Defendant's Proposed procedures

Mar 4 4 - Plaintiff's Proposed procedures

Mar 11 25 - Defendant's supplemental memorandum in support of Motion to dismiss and motion to

remand (Valeo, Jennings, Staats, and Levi)

Mar 11 25 - Answer of Intervening Defendants to First Amended complaint (Center for Public Financing of Election et al., and Common Cause)

Mar 12 25 - Motion of James C. Calaway of Houston, for leave to intervene as a party plaintiff

Mar 11 25 - Supplemental brief of Intervenor Center for Public Financing of Election, et al. and Common Cause)

Mar 13 4 - Motion of Intervenor James C. Calaway for clarification of motion to intervene as a party plaintiff

Mar 14 Per Curiam order that the parties file proposed findings of fact, and in conjunction with each such separate proposed finding shall file a documented offer of proof in support thereof, such documented offer to consist of actual documents, affidavits, depositions, or other evidence in tangible form, these filings to be made by April 3rd, within 15 days of of the above filing date, the parties will file respone indicating which of the first round of submitted proposed findings of fact they admit, which they admit in part, and which they deny; as to those proposed findings of fact in whole or in part not admitted, each party will that day file documented offers of proof establishing what it submits the fact to be; oral argument on the pending motions to remand and to dismiss will be heard on April 2, 1975; Counsel will be notified as to the time for oral argument at a later date; CJ Bazelon; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon and Wilkey, CJ

Mar 20 25 - Defendants' notice to take deposition upon oral examination

Mar 20 25 - Interrogatories to Plaintiffs

Mar 20 25 - Defendants' request for admissions

Mar 20 25 - Defendants' first request for production of documents

Mar 26 25 - Plaintiffs' opposition to motion for remand and suggestion for further proceedings

Mar 26 25 - Plaintiffs' supplemental opposition to motion to dismiss

Mar 26 25 - Motion of Lee Metcalf, United States Senator, for leave to file brief as Amicus Curiae and to participate in oral argument on the merits

Mar 26 25 - Interrogatories to Plaintiffs

Mar 26 Per Curiam order that consideration of applicant's motion to intervene be deferred until after the hearing on April 2, 1975 of the pending motions to dismiss and to remand; the applicant is permitted to file an amicus curiae brief no later than Tuesday, April 1, 1975 for the purpose of presenting his views on the pending motions; CJ Bazelon, Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon and Wilkey, CJ

Mar 28 Per Curiam order en banc sua sponte, that the following schedule for oral argument is adopted for Wednesday, April 2, 1975; On the Motion to dismiss; Federal Defendants/movant plaintiffs/ respondent - both 15 minutes; On the motion

to remand: Intervening defendants/movant Common Cause, Gardner - 8 minutes; intervening defendants/movant Center, League and seven named individuals - 8 minutes; Federal defendants/movant 14 minutes; Plaintiffs/respondent - 30 minutes; these time limits are subject to the qualification that they may be extended if the Court finds it useful in the interest of Justice and a full and fair hearing; CJ Bazelon; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon, and Wilkey, CJ

Mar 31 25 - Reply Brief of Intervening-defendants in support of motion to remand

Mar 31 25 - Preliminary Response to Defendants discovery filings

Apr 1 25 - Plaintiffs' motion for procedural order

Apr 1 25 - Defendants' motion to compel discovery

Apr 3 25 - Plaintiffs' Statement of Facts

Apr 3 25 - Documents supporting Plaintiffs' statement of facts

Apr 3 25 - Affidavits Supporting Plaintiffs' statement of facts

Apr 2 Argued before CJ Bazelon; McGowan, Tamm, Leventhal, Robinson, MacKinnon and Wilkey, CJ; The Court announced that Circuit Judge Wright is a member of this En Banc hearing, but is unable to be present; the case will be submitted to him on the briefs and tape recording of oral argument; On motion by David J. Anderson, Dennis G. Linder a member of

the bar of the Supreme Court of Iowa was allowed to argue pro hac vice for Federal Defendants

Apr 4 25 - Proposed findings of fact of defendants and intervening defendants Center for Public Financing of Elections, League of Women Voters of the United States, Clusen, Gregory, Jacknis, King, Noyes, Stern and Taft

Apr 4 25 - Proposed finding of fact of intervenor-defendants common cause and John Gardner and offer of proof filed pursuant to the court order of March 14, 1975

Apr 4 Exhibits by Defendants and Intervening-defendants Center for Public Financing of Elections, League of Women Voters of the United States, Clusen, Gregory, Jacknis, King, Noyes, Stern and Taft

Apr 8 10 - Notice of Taking Deposition of Thomas S. Winter, et al

Apr 8 25 - Response of Defendants and Intervening defendants to plaintiffs' motion for procedural order

Apr 10 10 - Notice of Taking Deposition of Laura Wertheimer

Apr 10 10 - Notice of Taking Depositon of Harry M. Fox

Apr 11 25 - Response in opposition to federal defendants' and intervening defendants' motion to compel discovery

Apr 11 25 - Defendants Valeo, Jennings, Staats, and Levi Notification to the court

Apr 14 Per Curiam order that the motion to remand the record is granted to the extent indicated in the attached memorandum; the record herein is re-

manded together with the second round of filings of proposed findings of fact and supporting documents due on April 18, 1975 pursuant to our order of March 14, 1975; the District Court shall return the record to this Court as soon as possible, but in no event later than May 19th; final action by this Court on defendants' motion to dismiss is deferred pending return of the record; CJ Bazelon; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon and Wilkey, CJ; Chief Judge Bazelon dissents for the reasons set forth in his attached statement

Apr 14 (Record was picked up by Judge Corcoran's Law Clerk, therefore there is no receipt)

Apr 15 Per Curiam order that the briefing schedule for a hearing before this Court on a date to be decided later shall be as follows; 14 days after return of the record to this Court, all parties will file their opening briefs; ten days thereafter all parties will file their reply briefs; Judge Corcoran receive a copy of this order; CJ Bazelon; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon and Wilkey, CJ

Apr 15 Certified copy of the above order sent to Judge Corcoran

Apr 21 25 - Plaintiffs' response to proposed findings of fact of defendants and intervening defendants Center for Public Financing of Elections, League of Women Voters of The United States, Clusen, Gregory, Jacknis, King, Noyes, Stern and Taft

Apr 21 25 - Response of defendants and intervening defendants to plaintiffs' proposed findings of fact

Apr 22 25 - Affidavit signed by Morris Udall offered as

proof in support of defendants' response to plaintiffs' proposed findings of fact (OK to file, Per RDP)

May 15 Per Curiam order en banc, sua sponte, that this case is hereby scheduled for oral argument at 2:00 P.M., Friday, June 13, 1975; CJ Bazelon; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon, and Wilkey, CJ

May 19 Certified Original Record on Remand [Certified to this Court pursuant to Title 2, Section 315(a)] (2 Volumes Original Record with one volume transcript, 1 box containing 16 depositions, 4 volumes bound in manila folders [Part I-Findings of Fact Agreed to by Parties, Part II-Statistical Findings of Fact, Part III- Court Findings of Fact, Part IV-Constitutional Questions] and 10 volumes of exhibits with blue covers)

May 23 25 - Motion of United States for leave to file amicus curiae brief in excess of page limitations

May 23 25 - Joint motion of plaintiffs and intervening defendants for leave to file briefs in excess of page limitations

May 28 Per Curiam order sua sponte, that oral argument in this case be presented jointly with oral argument in Buckley v. Valeo, Civ. No. 75-0001 (D.D.C.) to this Court sitting with the three judge District Court convened to consider the complaint in that case, in the courtroom of this Court on June 13, 1975 at 9:30 a.m; CJ Bazelon; and Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon and Wilkey, CJ

May 28 Per Curiam order by the Clerk for the Court, sua sponte, that the oral argument presently

scheduled for 2:30 P.M., on Friday, June 13, 1975 is hereby rescheduled for 9:30 A.M. on Friday, June 13, 1975

May 29 Per Curiam order that the pending motion for leave to intervene as a party plaintiff of James C. Calaway filed in this Court on March 12, 1975, and the pending motion for leave to file brief as amicus curiae and to participate in oral argument on the merits of Lee Metcalf, U.S.S. filed in this Court on March 26, 1975 are hereby granted; the Clerk shall modify the docket to reflect the substitution of parties; CJ Bazelon; and Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon and Wilkey, CJ

May 29 25 - Intervenor's complaint for declaratory and injunctive relief

May 30 Ordered by the Court en banc that motion of plaintiffs and intervening defendants for leave to file briefs in excess of page limitation is granted and plaintiffs and intervening defendants are granted leave to file briefs as follows: Plaintiffs principle briefs 225 pages standard (320 by other means), Intervening Defendants principle briefs 200 pages standard (280 by other means), Plaintiffs reply brief 88 pages standard (124 by other means) and Intervening Defendants reply brief 75 pages standard (105 by other means); CJ Bazelon, Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon and Wilkey, CJ

Jun 2 25 - Brief of Intervening Defendants on certified constitutional questions

Jun 2 25 - Brief Amicus Curiae of United States Senator Lee Metcalf

Jun 2 25 - Brief of the Plaintiffs

Jun 3 11 - Motion of Defendants Attorney General and Federal Election Commission to file briefs in excess of the page limitations of Rule 28(g)

Jun 2 25 - Brief for the Federal Elections Commission

Jun 6 Per Curiam order en banc that the motion of the Attorney General of the U.S. and the FEC to file briefs in excess of the page limitations of Rule 28 (g) is granted; CJ Bazelon; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon and Wilkey, CJ

Jun 6 25 - Brief for defendants Attorney General and FEC

Jun 6 25 - Brief for the Defendant Attorney General

Jun 6 15 - Statement of Plaintiff-Intervenor James Calaway

Jun 6 10 - Letter from Plaintiffs advising of additional authorities pursuant to Local Rule 8(g)

Jun 9 Per Curiam order en banc sua sponte, that the following schedule for oral argument to this Court and to the three-judge court in Buckley v. Valeo, 75-0001, (D.D.C.) sitting together on June 13, 1975 is adopted; Against the Challenged Acts – plaintiffs, Intervening Plaintiff, Amicus curiae – One and One-half hours to be divided among the parties as they see fit; For the Challenged Acts – Defendants, Intervening Defend-

ants – One and one-half hours to be divided among the parties as they see fit;
If the parties representing each side can not agree upon a division of time, the court will decide; the parties are advised that the Court has the prerogative of expanding the time of oral argument should justice so require; Argument will be heard at 9:30 a.m., on Friday, June 13, 1975, in the Ceremonial Courtroom, Sixth Floor, U.S. Courthouse; CJ Bazelon; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon, and Wilkey, CJ

Jun 6 11 - Motion of Amicus Curiae (Metcalf) for leave to file brief in form other than printed

Jun 12 25 - Plaintiffs' Reply Brief

Jun 12 10 - Letter from Counsel for Plaintiffs advising of additional authorities pursuant to Local Rule 8(g)

Jun 12 25 - Reply Brief of Intervening Defendants on Certified Constitutional Questions

Jun 12 15 - Motion of Amicus Curiae (Metcalf) for allocation of time in oral argument

June 12 25 - Plaintiffs' response to Amicus Curiae's motion respecting the time for oral argument

Jun 12 25 - Reply Brief for the Federal Election Commission

June12 25 - Intervening Defendants (Common Cause and John W. Gardner) motion for leave to file supplemental reply brief

Jun 12 25 - Motion of Intervening Defendants Common

Cause and John W. Gardner for leave to file supplemental reply brief in excess of the page limitations of Rule 28(g)

Jun 12 25 - Reply Brief for Defendants Attorney General and Federal Elections Commission

Jun 12 Per Curiam order en banc that the motion of amicus curiae for leave to file a brief in other than printed form filed June 6, 1975 is granted and the Clerk is directed to file the brief of amicus curiae; CJ Bazelon, Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon, and Wilkey, CJ

Jun 12 25- Brief amicus curiae of U.S. Senator Lee Metcalf

Jun 13 Per Curiam order en banc that the motion of intervening defendants for leave to file supplemental reply brief in excess of the page limitations is granted and the Clerk is directed to file intervening defendants' reply brief; CJ Bazelon; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon and Wilkey, CJ

Jun 13 15 - Supplemental reply brief of intervening defendants' Common Cause and John Gardner

Jun 13 Per Curiam order en banc that amicus curiae is granted 10 minutes time at oral argument independent of the times already allotted to the other parties; CJ Bazelon; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon and Wilkey, CJ

Jun 13 Argued before CJ Bazelon; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon and

Wilkey, CJ, sitting en banc; On motion by Brice M. Clagett, Ralph Winter a member of the bar of the Supreme Court of Connecticut was allowed to argue pro hac vice for plaintiffs; On motion by David J. Anderson, Dennis G. Linder a member of the bar of the United States District Court for the District of Columbia was allowed to argue pro hac vice for defendants

Jun 13 Letter from counsel for intervening defendants' advising of additional authorities pursuant to Local Rule 8(g)

Jul 24 Letter from Plaintiffs advising of additional authorities pursuant to Local Rule 8(g)

Jul 25 4 - Motion of Roy A. Schotland for leave to file memorandum as Amicus Curiae

Jul 25 25 - Letter from Plaintiffs advising of additional authorities pursuant to Local Rule 8(g)

Aug 1 Per Curiam order that the motion of Roy A. Schotland for leave to file a memorandum as amicus curiae is denied as untimely; Bazelon CJ, Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon and Wilkey CJ

Aug 15 Per Curiam Opinion.

Aug 15 Separate opinion filed by Chief Judge Bazelon dissenting from Part V-A-2 of the op.

Aug 15 Separate opinion filed by Circuit Judge Tamm, joined in by Judge Wilkey, dissenting from Parts IV, VI, and VII of the per curiam opinion.

Aug 15 Separate opinion filed by Circuit Judge MacKinnon dissenting from Part VII of the op.

Aug 15 Per Curiam Order answering the certified constitutional questions. See Appendix A of the Per Curiam Opinion.

Aug 15 Per Curiam order that the opinion filed this date in this case is amended as follows: On page 1570, second column, third and fourth lines delete the words "private for public" and substitute therefor the words "public for private".; CJ Bazelon; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon and Wilkey, CJ

Aug 22 Plaintiffs' notice of appeal to the Supreme Court of the United States

Aug 22 Letter from plaintiffs requesting record be transmitted to the Supreme Court

Aug 22 Receipt dated August 22, 1975 from the Clerk, Supreme Court for the original and supplemental records (8 volumes) and two boxes of transcripts and exhibits; notice of appeal; certified copy of the docket entries, opinion and order of this court dated August 15, 1975 and items 1 thru 100 (excluding items 41, 42 and 80) on this docket card

Aug 25 1 - Bill of Costs of Attorney General

Aug 25 1 - Bill of Costs of Attorney General and Federal Election Commission (Dept. of Justice)

Aug 29 10 - Plaintiffs' motion for leave to amend notice of appeal

Aug 29 Per Curiam order sua sponte amending opinion of 8-15-75, (By Chief Deputy Clerk)

Sept 2 Order of 4-14-75 released in printed opinion form this date.

Memorandum and Order of District Court
(January 24, 1975)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Caption Omitted in Printing]

MEMORANDUM AND ORDER

In their complaint the plaintiffs seek declaratory and injunctive relief against certain provisions of the Federal Election Campaign Act of 1971, 2 U.S.C. § 431 *et seq.* (Supp. II, 1972); the Federal Election Campaign Act Amendments of 1974, *Pub. L. No.* 93-443, 88 Stat. 1263; and Subtitle H of the Internal Revenue Code of 1954, 26 U.S.C. § 9001 *et seq.* (Supp. III, 1973), *as amended, Pub. L. No.* 93-443, 88 Stat. 1263, and against their enforcement by the defendants. The grounds of the complaint are that the statutes deprive them of the right to petition for redress of grievances, deprive them of the right of privacy, deprive tnem of due process of law and discriminate invidiously against them, all in violation of the First, Fourth, Fifth and Ninth Amendments to the Constitution. Further alleged grounds are that the mode of appointment and confirmation of members of the Federal Election Commission and its purported power to administer, interpret, make rules and enforce said statutes is in violation of the constitutional separation of powers. The charges are detailed in paragraphs 52 through 84 of the complaint.

This Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331, 2201-2202, and § 315(a) of the Federal Election Campaign Act of 1971, 88 Stat. 1285, 2 U.S.C. § 437h [hereinafter cited as § 315(a)].

Since they seek an injunction restraining the enforcement of an act of Congress, plaintiffs also seek to convene a three-judge district court, pursuant to 28 U.S.C. §§ 2282, 2284. The defendants have opposed that motion. Further, pursuant to § 315(a), plaintiffs request this Court to certify immediately all questions of constitutionality raised by the complaint to the United States Court of Appeals for the District of Columbia Circuit.[1]

The plaintiffs are four individuals (two of whom are Members of Congress, and one former Senator) and five organizations. The defendants are the Secretary of the United States Senate, the Clerk of the House of Representatives, the Comptroller General, the Attorney General and the Federal Election Commission.[2]

I

The Federal Election Campaign Act of 1971 as amended by the 1974 Amendments covers very comprehensively all aspects of the financing and conduct of future Federal elections, and the complaint is correspondingly broad, in that it attacks most of the key provisions of the Act on various

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[1] Plaintiffs also seek to have the defendants' time in which to respond to the complaint reduced from 60 days to 30 days. *Fed. R. Civ. P.* 12(a). In view of the fact that the defendants have moved to dismiss, plaintiffs' request is now moot.

[2] The 1974 Amendments to the Federal Election Campaign Act provide that the Act shall be administered by a "Federal Election Commission." 2 U.S.C. § 310(a). Until the Commission is qualified, the Comptroller General, the Secretary of Senate, the Clerk of the House of Representatives "shall continue to carry out their responsibilities under Title I and Title III of the Federal Election Campaign Act of 1971." 2 U.S.C. § 315(b). The Commission has not yet been established.

constitutional theories. But, at this particular juncture, we focus only upon the meaning and effect of § 315 (a).[3]

Section 315 establishes a unique procedure for judicial review of actions arising under the Act which raise constitutional issues. It authorizes the Federal Election Commission, the national committee of a political party, or any individual eligible to vote in any election for the office of President to bring an appropriate action in a district court to test the constitutionality of any provision of the Federal Election Campaign Act of 1971, *as amended,* or of Sections 608, 610, 611, 613, 614, 615, 616, or 617, of Title 18, United States Code.

The District Court in which a complaint is lodged is required to certify "immediately" all constitutional questions to the Court of Appeals for its Circuit, which, in turn, is required to hear and determine those questions sitting *en banc.*

The judgment of the Court of Appeals on the constitutional questions, in turn, is reviewable by direct *appeal* to

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[3] Section 315(a) provides:

"Sec. 315(a) The Commission, the national committee of any political party, or any individual eligible to vote in any election for the office of President of the United States may institute such actions in the appropriate district court of the United States, including actions for declaratory judgment, as may be appropriate to construe the constitutionality of any provision of this Act or of section 608, 610, 611, 613, 614, 615, 616, or 617 of title 18, United States Code. The district court immediately shall certify all questions of constitutionality of this Act or of section 608, 610, 611, 613, 614, 615, 616, or 617 of title 18, United States Code to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc."

the Supreme Court, and any such appeal must be brought within 20 days of the decision of the Court of Appeals. Finally, both the Supreme Court and the Court of Appeals are required to expedite any matter certified by the District Court.

These unusual review provisions pose several rather obvious questions for the District Court, *in limine, viz.:*

(1) Should the District Court make an initial determination as to constitutionality?

(2) If so, must a three-judge court be convened for that purpose?

(3) Should the District Court explore such preliminary matters as to the standing of each of the parties to bring a complaint?

As this Court construes § 315(a) and the legislative history of *Pub. L. No.* 93-443, the answer to each of the foregoing questions is in the negative.

The very essence of § 315, as the Court reads it, is speedy judicial review. The District Court is mandated "immediately" to certify questions of constitutionality to the Court of Appeals, § 315(a); the Court of Appeals is mandated to hear the case *en banc,* thus by-passing the normal panel determination, § 315(a); and the decision of the Court of Appeals, *en banc,* is reviewable by a direct appeal to the Supreme Court to be brought no later than 20 days after the decision of the Court of Appeals, § 315(b). It is to be further noted that it is the statutory duty of the Court of Appeals and of the Supreme Court to advance the case on their respective dockets and expedite the case "to the greatest possible extent." § 315(c). Such a mandated procedure would not seem to permit any activity on the part of the District Court which would involve the usual delay pending answer, briefing, argument and con-

sideration, provided only that a substantial constitutional question is raised by a complaint and that complaint is filed by a party having standing to lodge it.

The legislative history, although somewhat sparse, would seem to bear out these conclusions.

II

The 1974 Amendments to the Federal Election Campaign Act of 1971 became law October 15, 1974. *Pub. L. No.* 93-443. It immerged from S. 3044 and its House counterpart, H.R. 16090.[4]

The original S. 3044 was introduced in the Senate February 21, 1974. It did not include provisions for special review of constitutional issues as is now provided by § 315(a).

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[4] As a "clean" bill, S. 3044 had no hearings held on it. The same applies to its House counterpart, H.R. 16090. In the previous session of the Ninety-third Congress, however, there were numerous measures introduced in both the Senate and the House concerning various aspects of public financing of Federal elections. A number of those measures were accompanied by hearings. For example, in the Senate, *see Hearings on S. 1103, S. 1954 & S. 2417 Before the Subcomm. on Privileges and Elections of the Senate Comm. on Rules and Administration,* 93d Cong., 1st Sess. (1973); *Hearings on S. 23, S. 343, S. 372, S. 1094, S. 1189, S. 1303, S. 1355 & S.J. Res. 110 Before the Subcom. on Privileges and Elections of the Senate Comm. on Rules and Administration,* 93d Cong., 1st Sess. (1973). In the House, *see Hearings on H.R. 7612 & S. 372 Before the Subcomm. on Elections of the House Comm. on House Administration,* 93d Cong., 1st Sess. (1973) (2 vols.). In none of those bills was there a judicial review procedure precisely the same as § 315(a). It should be noted, however, that § 2(a) of S. 2417, to add a § 514(b) in a new Title V of the Federal Election Campaign Act of 1971, has (continued)

The history of the present § 315 is as follows:

(1) On April 10, 1974 Senator Buckley of New York (a plaintiff herein) introduced without objection an amendment to S. 3044, which read as follows:

EXPEDITIOUS REVIEW OF
CONSTITUTIONAL QUESTIONS

• • •

JUDICIAL REVIEW

"Sec. 407. (a) The Federal Election Commission, the national committee of any political party, and individuals eligible to vote for President are authorized to institute such actions, including actions for declaratory judgment or injunctive relief, as may be appropriate to implement or construe any provision of this Act or of Chapter 29 of title 18, United States Code. The district court shall immediately certify all questions of constitutionality of this Act to the United States court of appeals for that circuit, which shall hear the matter sitting en banc.

"(b) Notwithstanding any other provision of law or rule any decision on a matter certified under subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States. Such

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[4] (continued)
similar language to that of § 315 but without the "immediate certification" provision of § 315(a). *See Hearings on S. 1103, S. 1954 & S. 2417 Before the Subcomm. on Privileges and Elections of the Senate Comm. on Rules and Administration,* 93d Cong., 1st Sess. 495 (1973).

appeal must be brought within 20 days of the court of appeals decision.

"(c) It shall be the duty of the court of appeals and of the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any question certified under subsection (a)."

The amendment was accepted without vote. *Id.* At the time Senator Buckley submitted his amendment he remarked:

> . . . (The amendment) merely provides for the expeditious review of the constitutional questions I have raised. I am sure we will all agree that if, in fact, there is a serious question as to the constitutionality of this legislation, *it is in the interest of everyone to have the question determined by the Supreme Court at the earliest possible time.* *Id.* (Emphasis added.) 120 *Cong. Rec.* S5707 (daily ed. April 10, 1974).[5]

(2) S. 3044, as thus amended, was referred to the House Administration Committee on April 22, 1974.

(3) On July 24, 1974, the House version designated

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[5] *See also* the remarks of Representative Frenzel, one of the House minority conference managers of S. 3044, during the floor debate in the House concerning S. 3044, who stated: "(A)ny individual under this bill has a direct method to raise these (constitutional) questions and to have those considered *as quickly as possible by the Supreme Court.*" 120 *Cong. Rec.* H10336 (daily ed. Oct. 10, 1974). (Emphasis added). He also said that, in his view, "there are at least 100 items questionable from a constitutional standpoint in (S. 3044)." *Id.*

as H.R. 16090 was introduced in the House with the Buckley amendment included and was eventually reported out of committee with the amendment still included.

(4) On October 7, 1974, the Conference Report was filed with both the House and Senate. It was accepted by the Senate on October 8, 1974 and by the House October 10, 1974.

(5) Significantly, in conference, the authorization in the Buckley amendment "to institute such actions in the appropriate District Court including actions for declaratory judgment or injunctive relief as may be appropriate to implement or construe any provision of this Act," was changed to authorize actions "to construe the constitutionality of any provision of this Act or of Sections 608, 610, 611, 613, 614, 615, 616, or 617 of Title 18 U.S.C.." The power "to implement" the Act is deleted.

Where the change originated is not clear. It is not reported in hearings or debates. The comment in the Conference Report simply says:

> The conference substitute generally follows the House amendment and makes it clear that these special judicial review provisions are available only for actions directed at determining the constitutionality of provisions of the Act and of provisions of title 18, United States Code, related to the activities regulated by the Act. *S. Conf. Rep. No.* 1237, 93d Cong., 2d Sess. 96 (1974).

III

We would look, as well, to other provisions of the Federal Election Campaign Act of 1971 and Subtitle H of the

Internal Revenue Code of 1954 having some bearing on District Court activities in given situations.

A. § 314 of the 1971 Act sets out the enforcement powers of the Federal Election Commission and includes, *inter alia*, authorization for the Commission to institute suit in a District Court to implement its findings by injunctive or other appropriate relief. In such a case the action of the District Court is reviewable in the usual way by the Court of Appeals and then by way of *certiorari* to the Supreme Court. Of course, in such a case the Commission would be the plaintiff exercising its enforcement powers, while the present case represents a challenge by outside parties to the constitutionality of certain provisions of the Act. Presumably, a challenge to Commission procedures instituted under § 314 on constitutional grounds would invoke the application of § 315(a).

B. Section 9011(b)(1) and (2) of Title 26, U.S.C., to some extent would seem to cloud the meaning and effect of § 315(a).

Chapter 95 of Subtitle H was enacted to implement the so-called "dollar check-off." As originally enacted, it was not a part of the Federal Election Campaign Act of 1971. However, in 1974 the amendments to the 1971 Act and to Subtitle H were embraced within the same general framework, thus bringing them under the same umbrella, presumably to be construed compatibly.

Section 9011(b)(1) of Title 26, U.S.C., like § 315(a), authorizes the Federal Election Commission, the national committee of any political party, and any individual eligible to vote in any election for the office of President "to institute such actions, including actions for declaratory judgment or injunctive relief as may be appropriate to

implement or construe any provision of ... Chapter (95)."[6] However, § 9011(b)(2), unlike § 315(a), expressly provides that any such suits are to be heard and determined by a court of three judges in accordance with the provisions of § 2284 of Title 28, U.S.C.

Thus, although the Federal Election Campaign Act of 1971, the Federal Election Campaign Act Amendments of 1974, and Subtitle H of the Internal Revenue Code of 1954, are laws *pari materia* and form a cohesive all-embrasive framework as far as Federal elections are concerned, there is, nevertheless, inconsistency between the judicial review called for under § 315(a) and that required by § 9011 (b)(2).

Giving effect to the rule that all provisions of an act must be construed to give effect to its ultimate purpose,[7] the two provisions must be reconciled, unless we are to hold that a complaint, such as that at bar, challenging both the Subtitle H provisions, and the other provisions of the Act, is somehow to be bifurcated to give the two different parts of the 1974 Amendments different procedural treatment. We arrive at that reconciliation by concluding

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6 Chapter 95 of Subtitle H of the Internal Revenue Code of 1954, 26 U.S.C. § 9001 *et seq.* (Supp. III, 1973), is the Presidential Election Campaign Fund Act, the so-called dollar check-off.

Pub. L. No. 93-443, the 1974 Amendments, also added a new Chapter 96 of Subtitle H, the Presidential Primary Matching Payment Account Act. 88 Stat. 1297, 26 U.S.C. § 9031 *et seq.*

The 1974 Amendments substituted "Federal Election Commission" for "Comptroller General" in 26 U.S.C. § 9011(b). *See* § 404(c)(21) of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1293.

7 2A *C. Sands, Sutherland Statutory Construction* § 46.05, at 56-57 (4th ed. 1973).

that Congress, in its most recent pronouncement, namely § 315(a), directed that the constitutionality of "*any* provision of this Act"[8] is to be processed as provided in § 315(a) and that to the extent that § 315(a) is, or appears to be, inconsistent with the earlier enacted Chapter 95 of Subtitle H, § 315(a) is to control.

Notwithstanding any apparent inconsistencies or conflicts noted above, this Court is convinced that the overriding concern of Congress was to provide swift judicial review of *all* constitutional questions engendered by the passage of the 1974 Amendments, and to have all those questions, when properly framed in a single complaint, decided together rather than in a piecemeal fashion. Surely Congress could not have intended the unworkable result that would follow were this Court to convene a three-judge district court to decide plaintiffs' Chapter 95, Subtitle H claims, while the remainder of their claims proceeded directly to the Court of Appeals under § 315(a).[9]

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[8] Emphasis added. "This Act" is, of course, the Federal Election Campaign Act of 1971, as amended by the Federal Election Campaign Act Amendments of 1974. Section 315(a), as noted *supra*, was added by § 208(a) of the 1974 Amendments as a new section of Title III of the 1971 Act.

[9] Cf. United States v. Walton, No. 74-1790 (D.C. Cir. Jan 23, 1975), Slip Op. at 8:

> We note in conclusion that many rules of statutory construction place the courts in an unco-operative position with regard to legislative intent. Judicial protection of significant statutory and constitutional interests at times require courts to demand a "clear statement" of intent before deferring to a legislative judgment. There always comes a point, however, where the legislative intent is as clear as is humanely possible and at that point the courts must defer or exercise their constitutional responsibilities.

IV

The foregoing dictates the conclusions that Congress contemplated that any constitutional challenge to any provision of the Act would be processed through the lower courts to the Supreme Court with a minimum delay, and that to obviate as much delay as possible,[10] the only function of the District Court would be to screen the complaint for determination of whether a constitutional issue was raised and whether it was raised by persons having the statutory authority to do so.[11] The Court accordingly will certify the entire proceeding to the Court of Appeals forthwith.

Further, the Court concludes that a three-judge district court is not required in the present case. The plain statutory language indicates the unequivocal intent of Congress to establish an *ad hoc* procedure for judicial review of the statutes in question. The procedure established by § 315(a) is clearly inconsistent with that found in 28 U.S.C. §§ 2282 and 2284. Under § 2284 the three-judge district court hears and determines the questions presented on the merits. From its judgment there is a direct appeal to the Supreme Court. 28 U.S.C. § 1253. That procedure, itself an ex-

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[10] On this question of urgency and the problems attendant to any delay in resolving the constitutional questions, *see* Washington Post, Jan 18, 1975, at A4, col. 1; Washington Star-News, Jan 19, 1975, at E3, col. 1.

[11] ". . . Congress has the undoubted power to give, withhold, and restrict the jurisdiction of the courts other than the Supreme Court . . . ." Battaglia v. General Motors Corp., 169 F.2d 254, 257 (2d Cir.), *cert. den.*, 335 U.S. 887 (1948) (citation omitted).

ception to the usual Supreme Court review, has obviously been supplanted by § 315(a).[12]

V

In light of the above, the Court holds (1) that § 315(a) mandates that this Court must certify immediately to the Court of Appeals all well-pleaded constitutional questions, without in the first instance making a determination as to such constitutionality, and (2) that a three-judge district court is not required to be convened for this case.[13]

The Court specifically finds that the plaintiffs raise substantial constitutional questions, and that at least the four individual plaintiffs have standing to seek judicial review of the provisions in question.[14]

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[12] It would be anomalous indeed to convene a three-judge district court in this case, where at least one member of the court would have to be a Circuit Judge, and then to certify the case to the Court of Appeals, at which point the Circuit Judge who sat on the three-judge district court would seemingly have to recuse himself, thus obviating the congressional design that the case be heard by the Court of Appeals *en banc*.

[13] This case, then, is distinguishable from American Civil Liberties Union v. Jennings, 366 F. Supp. 1041 (D.D.C. 1973), *prob. juris. noted sub. nom.* Staats v. American Civil Liberties Union, 417 U.S. 944 (1974), a three-judge district court, which held unconstitutional § 104 (b) of the Federal Election Campaign Act of 1971, 47 U.S.C. § 803(b) (Supp. III, 1973).

In that regard, the Court notes that § 205(b) of the Federal Election Campaign Act Amendments of 1974 repealed Title I of the Federal Election Campaign Act of 1971, 47 U.S.C. §801 *et seq.* (Supp. III, 1973).

[14] It is not so clear, however, that each of the five organizational plaintiffs possesses the same requisite standing. This is so because obviously none is eligible to vote for the office of President in any election. It is unclear, in the present procedural posture of plaintiffs' case,

(continued)

Further, the Court declines to rule on the defendants' motion to dismiss. As on the question of organizational standing, the matters raised in the motion to dismiss are more properly left to the initial determination of the Court of Appeals.

VI

Accordingly, it is this 24th day of January, 1975,

ORDERED AND ADJUDGED that plaintiffs' application for a three-judge district court be, and the same is hereby, denied; and it is further

ORDERED AND ADJUDGED that the constitutional questions raised by plaintiffs in their complaint be, and the same are hereby, certified immediately to the United States Court of Appeals for the District of Columbia Circuit; and it is further

ORDERED AND ADJUDGED that the Clerk of this Court shall, as soon as practicable, transmit the entire file of the instant case to the Clerk of the Court of Appeals for this Circuit.

/s/ Howard F. Corcoran
Judge

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[14] (continued)
whether any of the named organizational plaintiffs may be "the national committee of any political party" within the meaning of the relevant statute. Since at least some of the plaintiffs have the requisite standing, and since the ultimate decision as to the standing of others may have to await further exploration, in the interests of time, this Court defers to the Court of Appeals on that issue.

First Amended Complaint for Declaratory and Injunctive Relief (February 7, 1975)

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

[Caption Omitted in Printing]

JURISDICTION

1. This action seeks declaratory and injunctive relief against certain provisions of the Federal Election Campaign Act of 1971, Public Law 92-225, 86 Stat. 3, 2 U.S.C. Sections 431 *et seq.* (hereinafter referred to as the FECA), the Federal Election Campaign Act Amendments of 1974, Public Law 93-443, 88 Stat. 1263 (hereinafter referred to as the FECA Amendments), and Subtitle H of the Internal Revenue Code of 1954, Public Law 92-178, 85 Stat. 562, as amended by Public Law 93-53, 87 Stat. 138, 26 U.S.C. Sections 9001 *et seq.* (hereinafter referred to as Subtitle H), and against their enforcement by the defendants, on the grounds that the FECA, the FECA Amendments, and Subtitle H deprive the plaintiffs of freedom of speech and association, of the right to petition for redress of grievances, of the right of privacy, and of due process of law and discriminate invidiously against them, all in violation of the First, Fourth, Fifth, Sixth, and Ninth Amendments to the Constitution and the further grounds that the mode of appointment and confirmation of members of the Federal Election Commission and its purported power to administer, interpret, make rules and enforce said laws is in violation of constitutional separation of powers.

2. The jurisdiction of this Court rests upon 28 U.S.C. Sections 1331, 2201, and 2202, and Section 315(a) of the FECA, 88 Stat. 1285, 2 U.S.C. Section 437h. The amount in controversy, exclusive of interests and costs, exceeds $10,000.

3. Convocation of a three-judge district court is moved pursuant to 28 U.S.C. Sections 2282 and 2284, and certification to the Court of Appeals is requested under Section 315(a) of the FECA, 88 Stat. 1285, 2 U.S.C. Section 437h.

PARTIES

4. Plaintiff JAMES L. BUCKLEY is a United States Senator from the State of New York. He is a citizen of the State of New York and of the United States and is eligible to vote in elections for the office of President of the United States. He is a registered voter in the State of New York in the Republican Party. He is a federal taxpayer. Plaintiff BUCKLEY desires to contribute to the campaigns of particular candidates for federal office amounts greater than $1,000 as a means of expressing his views on public issues. He may seek to be a delegate to the 1976 Republican Party National Convention. Plaintiff BUCKLEY's present intention is to seek re-election in 1976 as United States Senator from the State of New York. Said candidacy will be aided by volunteers whose incidental expenses will exceed $1,500 and thus constitute a contribution or expenditure within the FECA and the FECA Amendments. The expenditure of funds is essential to his success in conveying his ideas and positions on public issues to voters and potential voters. To that end, plaintiff desires to solicit and receive contributions larger than $1,000, employ personal funds or the funds of his immediate family as available and necessary, and to spend whatever amounts are available and necessary to convey his views to voters and potential voters in a meaningful way.

5. Plaintiff EUGENE J. McCARTHY is a former United States Senator from the State of Minnesota. He is a citizen of the State of Minnesota and of the United States

and is eligible to vote in elections for the office of President of the United States. He is a federal taxpayer. Plaintiff McCARTHY on January 12, 1975, announced his candidacy for President of the United States; he will run as an independent, supported by the Committee for a Constitutional Presidency-McCarthy '76. The expenditure of funds is essential to his success in conveying his ideas and positions on public issues to voters and potential voters. To that end, plaintiff desires to solicit and receive contributions larger than $1,000, and to spend whatever is available and necessary to convey his views to voters and potential voters in a meaningful way. Said candidacy will be aided by volunteers whose incidental expenses will exceed $1,500 and thus constitute an expenditure under the FECA and the FECA Amendments.

6. Plaintiff WILLIAM A. STEIGER is a Member of the United States House of Representatives from the Sixth Congressional District of Wisconsin. He is a citizen of the State of Wisconsin and of the United States, and is eligible to vote in elections for the office of President of the United States. He is a registered voter in the State of Wisconsin. He is a federal taxpayer. He may seek to be a delegate to the 1976 Republican Party National Convention. Plaintiff STEIGER is considering a candidacy for federal office in 1976. The expenditure of funds is essential to his success in conveying his ideas and positions on public issues to voters and potential voters. To that end, plaintiff desires to spend whatever amounts are available and necessary to convey his views to voters and potential voters in a meaningful way.

7. Plaintiff STEWART RAWLINGS MOTT is a citizen of the State of New York and of the United States, and is eligible to vote in elections for the office of President

of the United States. He is a registered voter in the State of New York. He is a federal taxpayer. He has contributed in the past and will contribute in the future amounts in excess of $1,000 to individual candidates for federal office and in excess of $25,000 in the aggregate to such candidates. Plaintiff has also made expenditures on behalf of clearly identified candidates but independent of such candidates in excess of $1,000 and intends to do so in the future. Plaintiff MOTT has made and intends to make expenditures against clearly identified candidates in excess of $1,000. Plaintiff has incurred and intends to incur certain incidental expenses on behalf of candidates as a volunteer in excess of $500. Such contributions are for the purpose of furthering plaintiff's ideas and positions on issues of public policy.

8. Plaintiff COMMITTEE FOR A CONSTITUTIONAL PRESIDENCY-McCARTHY '76 is a principal campaign committee within the meaning of the FECA, the FECA Amendments, and Subtitle H and a not-for-profit corporation under the laws of the State of Illinois. Plaintiff is independent of the major parties and of any other political party. It is sponsoring a candidate for the office of President of the United States in 1976 and desires to solicit and receive on behalf of such candidate contributions in excess of $1,000, to contribute to said candidate an amount in excess of $5,000 and to make expenditures on behalf of said candidate in excess of two cents multiplied by the voting age population of the United States. Plaintiff will not hold a national nominating convention in 1976 to select its candidate, as such a convention is defined by the FECA Amendments. If plaintiff's candidate is to wage an effective campaign as an independent, he must make expenditures in excess of $20,000,000. Plaintiff's candidate will not be selected by primaries and will become

eligible for state ballots through petition, and expects to incur expenses in that petition effort. Said activities are for the purpose of furthering plaintiff's ideas and positions on issues of public policy and are essential to its ability to participate meaningfully in the political process.

9. Plaintiff CONSERVATIVE PARTY OF THE STATE OF NEW YORK (hereinafter CONSERVATIVE PARTY) is a political party in the State of New York and a political committee within the meaning of the FECA, the FECA Amendments, and Subtitle H. It has nominated in the past and intends to nominate in 1976 candidates for the offices of President of the United States, United States Senator from the State of New York, and members of the United States House of Representatives from all or nearly all of the Congressional Districts of the State of New York. Plaintiff will seek to place its candidate for President only on the ballot in New York. Plaintiff is what is commonly called a third party. It intends to solicit and receive contributions in excess of $1,000 for many such candidates, to contribute to many such candidates amounts in excess of $5,000, and to expend on behalf of said candidate for President of the United States an amount in excess of $5,000, to expend an amount in excess of two cents multiplied by the voting age population of the State of New York in the case of its candidate for United States Senator, and to expend an amount in excess of $10,000 in the case of many candidates for the House of Representatives. In some cases, plaintiff may choose a candidate who it hopes will expend personal funds in excess of $35,000 in the case of candidate for United States Senator and $25,000 in the case of a candidate for the House. Said activities are for the purpose of furthering plaintiff CONSERVATIVE PARTY's ideas and positions on issues of public policy and are essential

to its ability to participate meaningfully in the political process.

(10)a. Plaintiff MISSISSIPPI REPUBLICAN PARTY is a political party in the State of Mississippi, and is part of the National Republican Party. It has nominated in the past and intends to nominate in 1976 candidates for the offices of President of the United States, United States Senator from the State of Mississippi, and members of the United States House of Representatives from all or nearly all of the Congressional Districts of the State of Mississippi. The State Central Committee of plaintiff MISSISSIPPI REPUBLICAN PARTY voted in 1972 not to solicit, receive, or expend money on behalf of its candidates for the above mentioned offices because it opposed in principle the requirements imposed on political committees which engaged in such activities by the FECA. Plaintiff will continue this policy under the FECA Amendments. The plaintiff would prefer to contribute directly to its candidates, and may reconsider its 1972 decision in light of the political situation in 1976 and the resolution of this suit. The plaintiff, its officers, and records have been subject to careful and exacting scrutiny by agents of the supervisory officers under the FECA, even despite its decision not to solicit, receive, and expend money on behalf of its candidates.

(b). Although plaintiff MISSISSIPPI REPUBLICAN PARTY will not itself contribute financially to its candidates, it intends to allow persons supporting its candidates to contribute in excess of $1,000 to such candidates. It further intends that its candidates solicit and receive contributions in excess of $1,000, and that they be allowed to expend on behalf of their candidacies whatever amounts are available and necessary. The plaintiff also intends that

some volunteers in the campaigns of its candidates expend in excess of $500 for the incidental expenses such volunteers may incur.

(c). Representatives of plaintiff attend Republican National Conventions. Said representatives vote on the Republican Party's nominations for the offices of President and Vice President of the United States, and on all other matters that in the normal course of events come before such conventions. Plaintiff's representatives also serve, as the Republican Party rules prescribe, on committees of the National Convention, such as the Credentials Committee, and the Platform Committee. Plaintiff desires that the Republican National Committee, on which plaintiff is represented by its National Committeeman and Committeewoman, and State Chairman, spend whatever amounts are available and necessary to finance the 1976 Republican National Convention. Plaintiff is opposed in principle to accepting any payments from the United States Government to finance the Republican Party National Convention in 1976.

(d). The experience of the plaintiff MISSISSIPPI REPUBLICAN PARTY has been and is that affiliation with the plaintiff is a controversial matter in many parts of the State. Persons who identified with the plaintiff's activities may be subjected to harassment or reprisals. Plaintiff does not, therefore, disclose the names of its members or contributors, and offers assurances that their names will remain confidential.

(e). All of plaintiff MISSISSIPPI REPUBLICAN PARTY's activities are for the purpose of furthering plaintiff's ideas and positions on issues of public policy and are essential to its ability to participate meaningfully in the political process.

11. Plaintiff LIBERTARIAN PARTY is a national political party with affiliated organizations in 38 states, a not-for-profit corporation under the laws of the State of Colorado, and a political committee within the meaning of the FECA, the FECA Amendments, and Subtitle H. The Party was formed in 1971 and its candidates for President and Vice President of the United States received one vote in the Electoral College in 1972. Plaintiff has nominated in the past and intends in the future to nominate candidates for the offices of President of the United States, United States Senator, and members of the United States House of Representatives. Plaintiff intends to solicit and receive contributions in amounts in excess of $1,000 and to expend for its national nominating convention and on behalf of its Presidential and Vice Presidential candidates such amounts as are available and necessary. In addition, Plaintiff may nominate for the office of President of the United States a candidate who will expend in excess of $50,000 of personal funds for said candidacy. Activities of the Plaintiff LIBERTARIAN PARTY are intended to disseminate its ideas and philosophy to the American public and the solicitation of contributions in amounts exceeding $1,000 are an integral part of those activities.

Plaintiff further regards the acceptance of any subsidy from the United States Government for itself or its candidates to be contrary to its basic philosophy.

12(a). Plaintiff NEW YORK CIVIL LIBERTIES UNION, INC. (hereinafter NYCLU) is a not-for-profit corporation, organized under the laws of the State of New York. It is a non-partisan organization, dedicated to defending the rights guaranteed to persons under the Constitution and having as a principal function the dissemination of information concerning such rights within the State of New

York. Plaintiff NYCLU, the New York State affiliate of the American Civil Liberties Union, is and has been since its inception barred by the American Civil Liberties Union constitution, by-laws, and policies from endorsing or opposing any candidate for public office.

(b). Plaintiff NYCLU has in excess of 40,000 members in New York State. Such members reside in all parts of the State. Membership dues for the NYCLU are $15 per year. Many members contribute more than $15 per year. Some contribute more than $100 per year, and the prime source of funds for NYCLU is contributions by members. The experience of the plaintiff NYCLU has been and is that membership is a controversial matter in many parts of the State. NYCLU does not disclose the names of its members and contributors. NYCLU regularly receives a substantial amount of "hate mail," most of which attacks NYCLU, its leadership and members, for allegedly subverting law and order or supporting "radical" groups. Numerous persons who have been identified with NYCLU activities have from time to time been threatened with physical violence or subjected to harassment or reprisals. As a consequence, many members request assurances that their names will remain confidential, and many contributors expressly request that they not be listed on the membership rolls.

(c). As part of its program of public education on controversial civil liberties issues, such as school busing, prisoners rights, and police misconduct, plaintiff NYCLU often sponsors newspaper advertisements or otherwise expends funds in excess of $1,000 in order to communicate its views to the public, and intends to do so in the future. The sole purpose of such activity is to set forth and publicize plaintiff's views and positions on important public

issues involving civil liberties. Although plaintiff NYCLU does not endorse or oppose the election of candidates for public office, its advertisements and statements of views on public issues frequently and necessarily refer to, praise or criticize the conduct or actions of clearly identified public officials who may also happen to be candidates for federal office.

(d). In addition, the plaintiff NYCLU regularly publicizes, in its membership newsletter and through other publications, the civil liberties voting records, positions and actions of elected public officials, who are also frequently candidates for federal office. The NYCLU also solicits and then publicizes the views of candidates for office on civil liberties issues. NYCLU's purpose in communicating such information is to inform its members and the public generally about the views and actions of public officials and candidates with respect to civil liberties issues. The expenses of disseminating such information are normally paid for out of the plaintiff's general funds supplied by membership dues and contributions. Disclosure by the plaintiff of the names of its members and contributors would cause and tend to cause persons who are presently members to resign and would deter other persons from joining, paying dues and making contributions to the NYCLU.

13(a). Plaintiff AMERICAN CONSERVATIVE UNION (hereinafter ACU) is a political committee within the meaning of the FECA, the FECA Amendments, and Subtitle H of the Internal Revenue Code of 1954. Plaintiff is independent of the two major political parties or of any other political party. Plaintiff ACU has made in the past, and intends to continue in the future to make contributions to political candidates whose ideas and positions on issues of

public policy are similar to its own. These contributions will exceed $5,000 in the case of individual candidates. Said contributions are for the purpose of furthering ACU's positions on public issues.

(b). In addition, the Plaintiff ACU regularly publicizes, both in communications to its members and to the general public, the voting records, positions, and actions of elected public officials, who are also frequently candidates for federal office. ACU, among other things, annually publishes a percentage rating of the voting record of incumbent members of both Houses of Congress, showing whether such incumbents supported or opposed issues of interest to ACU and its members.

14. Plaintiff CONSERVATIVE VICTORY FUND (hereinafter CVF) is a political committee within the meaning of the FECA, the FECA Amendments, and Subtitle H of the Internal Revenue Code of 1954. Plaintiff is independent of the two major political parties or of any other political party. Plaintiff CVF has made in the past, and intends to continue to make in the future, contributions to political candidates whose ideas and positions on issues of public policy are similar to its own. These contributions have exceeded and will exceed $5,000 in the case of individual candidates. Said contributions are for the purpose of furthering CVF's positions on public issues.

15. Plaintiff HUMAN EVENTS, INC., is a corporation organized under the laws of the State of Delaware. It publishes a weekly newspaper devoted primarily to the reporting of events of political importance and interest, to the discussion of public issues, and to the discussion of public officials, political leaders and candidates. HUMAN EVENTS also distributes books, tapes, pamphlets, reprints of articles, and employs other forms of communication to further its

corporate and editorial purposes. It endorses explicitly or by implication or refrains from endorsing candidates for federal offices where it deems it necessary and appropriate. It regularly takes editorial positions on matters of public controversy. It has in the past and intends in the future to recommend to those of its readers who share its views that such readers communicate their views to public officials, political candidates, and other political leaders. Plaintiff is wholly owned by its three top executive employees and is not controlled directly or indirectly by any political party or political committee.

16. Defendant FRANCIS R. VALEO is the duly appointed Secretary of the United States Senate. This defendant is a designated "supervisory officer" within the meaning of the FECA and the FECA Amendments and will enforce Titles I and III of the FECA until the appointments and qualification of all the members and general counsel of the Federal Election Commission, Section 208, FECA Amendments, 88 Stat. 1286. He is sued in his official capacity.

17. Defendant W. PAT JENNINGS is the duly appointed and presently acting Clerk of the United States House of Representatives. This defendant is designated a "supervisory officer" within the meaning of the FECA and FECA Amendments and will continue to enforce Titles I and III of the FECA until the appointments and qualification of all the members and general counsel of the Federal Election Commission, Section 208, FECA Amendments, 88 Stat. 1286. He is sued in his official capacity.

18. Defendant ELMER B. STAATS is the duly appointed Comptroller-General of the United States. This defendant is designated a "supervisory officer" within the meaning of the FECA and FECA Amendments and will

continue to enforce Titles I and III of the FECA until the appointments and qualification of all the members and general counsel of the Federal Election Commission, Section 208, FECA Amendments, 88 Stat. 1286. He is sued in his official capacity.

19. Defendants VALEO, JENNINGS, and STAATS, in their respective capacities as "supervisory officers" under the FECA, are charged with enforcement of the FECA and the Regulations promulgated thereunder. Defendants VALEO and JENNINGS are also *ex officio* Members of the Federal Election Commission.

20. Defendant EDWARD H. LEVI is the Attorney General of the United States. As such, he is charged with the enforcement of criminal sanctions against violations of Title 18 of the United States Code. He is also empowered to receive from the supervisory officers and/or the FEDERAL ELECTION COMMISSION notifications of apparent violations of the FECA and the FECA Amendments, and at the request of the supervisory officers and/or FEDERAL ELECTION COMMISSION, to institute civil actions for relief or any other appropriate order. In any case in which the FEDERAL ELECTION COMMISSION refers an apparent violation to the Defendant, he must respond by report to the Commission with respect to any action taken by him regarding the apparent violation.

21. Defendant FEDERAL ELECTION COMMISSION is established by Section 208(a) of the FECA Amendments, 88 Stat. 1280, as amended by the FECA, 2 U.S.C. Section 437c. The six members of the FEDERAL ELECTION COMMISSION have not been confirmed as of the date of the filing of this complaint. When said members are confirmed and in office, they will be named in their official capacities as defendants in this action.

THE FEDERAL ELECTION CAMPAIGN ACT OF 1971 AND THE AMENDMENTS OF 1974

22. The FECA Amendments substantially revise the FECA, and incorporate within their statutory framework Subtitle H of the Internal Revenue Code of 1954.

Limits on Contributions to Candidates

23. Section 101(a) of the FECA Amendments, 88 Stat. 1263, amends 18 U.S.C. Section 608 to provide *inter alia* that

(a) no person (as defined by 18 U.S.C. Section 591 (g) to mean an "individual, partnership, committee, association, corporation or any other organization or group of persons") shall contribute to any candidate with respect to any election for any federal office more than $1,000;

(b) no individual shall make contributions aggregating more than $25,000 in any calendar year (contributions in a calendar year being defined to mean any contribution made with respect to a given election whether or not made during the actual year of such election); and

(c) no political committee as defined by 18 U.S.C. Section 608(b) as amended by the FECA Amendments to mean an organization registered as such under Section 303 of the FECA for a period of not less than 6 months which has received contributions from more than 50 persons and (except for State party organizations) has contributed to 5 or more candidates for federal office (other than a principal campaign committee) shall make contributions to any candidate with respect to any election for federal office in excess of $5,000.

24. Section 101(b) of the FECA Amendments, 88 Stat. 1266, amends 18 U.S.C. Section 608(a)(1) to provide that no candidate shall make expenditures from his personal funds or those of his immediate family in connection with his campaigns for nomination for election, or for election to federal office in excess of the following aggregate amounts:

(a) $50,000, in the case of a candidate for the office of President or Vice President of the United States;

(b) $35,000, in the case of a candidate for the office of Senator or for the office of Representative from a State which is entitled to only one Representative; and

(c) $25,000, in the case of a candidate for the office of Representative in any other State.

25. Section 120(c) of the FECA Amendments, 88 Stat. 1269, amends 18 U.S.C. Section 591(e) to provide that certain incidental expenses incurred by volunteers in excess of $500 are a "contribution" within the meaning of Section 101(a).

26. The limitations specified in paragraphs 23, 24 and 25 of this complaint are not to be adjusted according to changes in the Consumer Price Index.

Limits on Candidate Expenditures

27. Section 101(a) of the FECA Amendments, 88 Stat. 1264, amends 18 U.S.C. Section 608 to provide that:

(a) no candidate shall make expenditures in excess of $10,000,000 in the case of a candidate for nomination to the office of President of the United States, except that the aggregate of expenditures in any one State shall not

exceed twice the expenditure limitation applicable in such State to a candidate for nomination for election to the office of Senator, and except that the Federal Election Commission is empowered to prescribe rules under which expenditures in two or more States shall be allocated for purposes of the expenditure limitation, based on the voting age population in each State which can reasonably be expected to be influenced by such expenditure;

(b) no candidate shall make expenditures in excess of $20,000,000 in the case of a candidate for election to the office of President of the United States;

(c) no candidate shall make expenditures in excess of the greater of 8 cents multiplied by the voting age population of the State or $100,000, whichever is greater, in the case of a campaign for nomination for election by a canddiate for the office of United States Senator or by a candidate for the office of Representative from a State which is entitled to only one Representative;

(d) no candidate shall make expenditures in excess of the greater of 12 cents multiplied by the voting age population of the State or $150,000, whichever is greater, in the case of any campaign for election by a candidate for the office of Senator or by a candidate for the office of Representative from a State which is entitled to only one Representative;

(e) no candidate shall make expenditures in excess of $70,000 in the case of any campaign for nomination for election, or for election by a candidate for the office of Representative in any State entitled to more than one Representative;

(f) Section 102(d) of the FECA Amendments, 88 Stat. 1270-1271, amends 18 U.S.C. Section 591(f), relating to expenditures to exclude, *inter alia*, a candidate's fund-

raising costs up to 20 percent of the applicable spending limit; and

(g) the limitations enumerated in paragraph 27 subparagraphs (a) through (e) of this complaint shall be adjusted with reference to the Consumer Price Index, by a formula provided in Section 101(a) of the FECA Amendments, 88 Stat. 1265.

28. Section 101(a) of the FECA Amendments, 88 Stat. 1264, amends 18 U.S.C. Section 608 to define an expenditure "made on behalf of a candidate" as one made by

(a) an authorized committee or any other agent of the candidate for the purposes of making any expenditure; or

(b) any person authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate, to make the expenditure.

Independent Expenditure Limitations

29. Section 101(a) of the FECA Amendments, 88 Stat. 1265, amends 18 U.S.C. Section 608, to prohibit expenditures by any "person" as defined by 18 U.S.C. Section 591(g) to mean an "individual, partnership, committee, association, corporation or any other organization or group of persons," independent of and not by or on behalf of a candidate but "relative to a clearly identified candidate" in excess of $1,000. "Clearly identified" is defined to mean (i) the candidate's name appears, (ii) a photograph or drawing of the candidate appears, or (iii) the identity of the candidate is apparent by unambiguous reference.

Expenses of Volunteers

30. Section 102(d) of the FECA Amendments, 88 Stat. 1270, amends 18 U.S.C. Section 591 to provide that "expenditure" includes certain incidental expenses incurred by volunteers in excess of $500.

Penalties

31. Section 101(a) of the FECA Amendments, 88 Stat. 1266, amends Section 608 of the FECA to provide that any person who violates any provision of that Section shall be fined not more than $25,000 or imprisoned not more than one year, or both.

Presidential Nominating Conventions

32. Section 406(a) of the FECA Amendments, 88 Stat. 1295, amends Section 9008 of the Internal Revenue Code of 1954 to limit the expenditures of the national committee of a party with respect to a presidential nominating convention to $2,000,000 (adjusted to the Consumer Price Index).

33. Section 406(a) of the FECA Amendments, 88 Stat. 1296, amends Section 9008 of the Internal Revenue Code of 1954 to provide that the Federal Election Commission may authorize the national committee of a party to make expenditures which exceed the limitation enumerated in paragraph 32 of this complaint. Such authorization is to be based on the Commission's determination that "due to extraordinary and unforseen circumstances, such expenditures are necessary to assure the effective operation of the presidential nominating convention by such committee."

34. Section 406(b)(3) of the FECA Amendments, 88 Stat. 1296, amends Section 9012 of the Internal Revenue

Code of 1954, to provide that any officer or member of a national committee who consents to a violation of the requirements specified in paragraph 32 of this complaint shall be fined not more than $5,000 or imprisoned not more than one year, or both.

Amounts Contributed in Excess of Expenditures

35. Section 210 of the FECA Amendments, 88 Stat. 1289, provides that amounts received by a candidate as contributions which exceed his or her expenditures may be used to defray any ordinary and necessary expenses incurred in connection with his or her duties as holder of a federal office.

Expenditures of Political Party National Committees

36. Section 101(a) of the FECA Amendments, 88 Stat. 1265, amends 18 U.S.C. Section 608 to provide that the national committee of a political party and state committees of a political party may make expenditures in connection with campaigns for federal office subject to certain spending limits. In the case of a national committee, it may spend no more than an amount equal to two cents multiplied by the voting age population of the United States in connection with a general election for President. A national or state committee or a party may spend: (1) up to two cents multiplied by the voting age population of the State or $20,000, whichever is greater, in connection with an election to the office of Senator or of Representative from a State which is entitled to only one Representative; (2) up to $10,000 in connection with an election to the office of Representative in any other State.

Subsidy for Presidential Elections

37. Sections 403-409 of the FECA Amendments, 88 Stat. 1291, amend Subtitle H of the Internal Revenue Code of 1954 to provide public financing for elections for the office of President of the United States. Under Section 9002 a candidate with respect to any presidential election is defined as an individual who has been nominated for election to that office by a major party or has qualified to have his name on the election ballot (or to have the names of electors pledged to him on the election ballot) in ten or more States. A major party is defined as one whose candidate in the preceding presidential election received, as the candidate for such party, twenty-five percent or more of the total number of popular votes received by all candidates for such office. A minor party is defined as one whose candidate in the preceding presidential election received, as the candidate of such party, five percent or more but less than twenty-five percent of the total number of popular votes received by all candidates for such office. A new party is defined as one which is neither a major party nor a minor party.

38. Section 9006 of the Internal Revenue Code of 1954, as amended by the FECA Amendments, establishes a "Presidential Election Campaign Fund" composed of amounts designated to the fund by individuals under Section 6096. Section 6096 permits individual and joint taxpayers to designate one or two dollars, as the case may be, of the taxes they owe to the Presidential Election Campaign Fund. If, at the time of a certification from the Federal Election Commission for payment to eligible candidates, such amounts are not or may not be sufficient to satisfy the full entitlements of the eligible candidates of all political parties, a pro rata distribution is called for, in accord

with a priority for different kinds of expenses as established by the FECA.

39. Under Section 9004 of the Internal Revenue Code of 1954, as amended by Section 404(a) of the FECA Amendments, 88 Stat. 1291, candidates for major parties are entitled to equal payments, up to the statutory expenditure limit of $20,000,000, as adjusted by reference to the Consumer Price Index. Candidates of minor parties are entitled to payments equal to an amount which bears the same ratio to the amount allowed major party candidates as the number of popular votes received by the minor party's presidential candidate in the preceding presidential election bears to the average number of popular votes received by major party candidates for President in the preceding presidential election. A candidate who in the previous presidential election received between five and twenty-five percent of the popular vote is to receive an amount computed in the same manner as that of a minor party (less whatever his or her party receives). After the election, a candidate of a minor party who receives more than five percent of the popular vote is entitled to an amount similarly computed if that exceeds the amount computed on the basis of the previous election. A candidate of a new party who receives more than five percent of the popular vote is entitled after the election to an amount computed on the basis of the same ratio.

40. Under Section 9008 of the Internal Revenue Code of 1954, as amended by Section 406(a) of the FECA Amendments, 88 Stat. 1294, major parties are entitled to payments up to $2,000,000 to defray expenses of nominating conventions (to be paid before any of the payments specified in paragraph 39 of this complaint). Minor parties are entitled to an amount to support their nominating

conventions computed on the ratio described in paragraph 39 of this complaint based on the previous presidential election. The Federal Election Commission may authorize national committees of major and minor parties to make expenditures exceeding the limits described in paragraph 32 of this complaint upon a determination by the Commission that "due to extraordinary and unforeseen circumstances, such expenditures are necessary to assure the effective operation" of the convention.

41. Under Sections 9033 and 9034, as amended by Section 408(c) of the FECA Amendments, 88 Stat. 1297, a candidate for nomination for election to the office of President of the United States may receive from the Presidential Election Campaign Fund funds to pay expenses incurred in connection with his or her campaign for nomination if he or she has received contributions in excess of $5,000 from residents of at least twenty States (the excess over $250 from any one individual not to be counted), the funds provided to be in an amount matching such contributions (the excess over $250 from any one individual not to be matched). Such payments are to be made only if sufficient funds are available for the payments specified in paragraphs 39 and 40 of this complaint.

Federal Election Commission

42. Section 208(a) of the FECA Amendments, 88 Stat. 1280, amends the FECA, 2 U.S.C. Section 437c, by providing for the establishment of a Federal Election Commission. Said Commission is to be composed of six members, two appointed by the President pro tempore of the Senate on the recommendations of the majority and minority leaders of the Senate, two by the Speaker of the House of

Representatives on the recommendations of the majority and minority leaders of the House, and two by the President. All must be confirmed by a majority of both Houses.

43. The Commission has broad powers, Section 208(a) of the FECA Amendments, 88 Stat. 1282, 2 U.S.C. Section 437d. It may, *inter alia:* (a) investigate with the aid of compulsory process; (b) exercise primary jurisdiction with respect to civil enforcement of the FECA, as amended, by bringing actions (including proceedings for injunction) in federal district courts; (c) refer violations to the Attorney General; (d) formulate general policy with respect to the administration of the FECA, the FECA Amendments, and certain provisions of Title 18 of the United States Code; (e) render advisory opinions; and (f) make rules necessary to carrying out the FECA and the FECA Amendments.

44. Section 209(b)(1) of the FECA Amendments, 88 Stat. 1287, amends Section 316(a) of the FECA to empower the Commission to make rules and regulations under the provisions of the FECA and FECA Amendments relating to reporting and disclosure. Any proposed rule or regulation dealing with required reports or statements by a candidate for the office of Senator and by political committees supporting such candidate shall be transmitted to the Senate. If the Senate does not disapprove such a proposed rule or regulation within 30 legislative days, the Commission may prescribe it. Any proposed rule or regulation dealing with required reports or statements by a candidate for the office of Representative and by political committees supporting such candidate shall be transmitted to the House. If the House does not disapprove such proposed rule or regulation within 30 legislative days, the Commission may prescribe it. If a proposed

rule relates to required reports or statements by a candidate for the office of President of the United States, and by political committees supporting such candidate, it shall be transmitted to both the House and the Senate. Both the Senate and the House may disapprove any such proposed rule or regulation within 30 legislative days.

45. Section 302 of the FECA Amendments, 88 Stat. 1290, amends the FECA, 2 U.S.C. Section 456, to provide that if the Commission finds that a candidate for a federal office failed to file a report required by the FECA or the FECA Amendments, such person shall be disqualified from becoming a candidate in any future election for federal office until one year after the expiration of the term for which such person was a candidate.

Miscellaneous Definitions

46. The FECA and FECA Amendments define in Section 301(d) a political committee as "any committee, club, association, or other group of persons which receives contributions or makes expenditures during a calendar year in an aggregate amount exceeding $1,000."

47. Section 301(e) of the FECA and Section 591(e) of Title 18 U.S.C., as amended, define a contribution as a gift, subscription, loan, advance, or deposit of money or anything of value made for the purpose of influencing the nomination for election of any person to federal office or for influencing the results of a primary to select delegates to a national nominating convention or influencing the result of an election held for the expression of a preference for the nomination of persons for election to the office of the President of the United States. News stories, commentaries and editorials are not excepted from these definitions.

48. Section 301(f) of the FECA and Section 591(f) of Title 18 U.S.C. define expenditures to mean a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing the nomination for election of any person to federal office or for influencing the results of a primary to select delegates to a national nominating convention or influencing the results of an election held for the expression of a preference for the nomination of persons for election to the office of the President of the United States. News stories, commentaries and editorials are excepted from these definitions.

Reporting and Disclosure

49. Under Section 302(b) of the FECA, as amended by Section 202(a) of the FECA Amendments, 88 Stat. 1275, committees must keep detailed records identifying any person who contributes $10 or more. Under Section 304(a) of the FECA, as amended by Section 204(a) of the FECA Amendments, 88 Stat. 1277, political committees receiving contributions or making expenditures on behalf of a candidate must file reports with said candidate's principal campaign committee which comply in all respects with the reports required to be filed with the Federal Election Commission by the principal campaign committee. A principal campaign committee must, under Section 304(b) of the FECA, report the full name, mailing address, and occupation of each person who has made one or more contributions to or for said committee in an aggregate amount in excess of $100, together with the amount and date of said contribution.

50. Section 204(c) of the FECA Amendments, 88 Stat. 1277, amends Section 304 of the FECA to provide that a

member of Congress need not report as contributions received or expenditures made the value of services furnished by the Senate or House recording studios, or by an individual whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives, and who furnishes such services as his primary duty as an employee of the Senate or House of Representatives, or if such services were paid for by the Republican or Democratic Congressional Committees. The section does not apply to recording services furnished during the calendar year before the year in which the member's term expires.

51. Section 204(c) of the FECA Amendments, 88 Stat. 1278, provides that every person who makes contributions or expenditures other than by contributions to a political committee or candidate in an aggregate amount in excess of $100 shall file with the Commission a report containing the information described in paragraph 49 of this complaint.

52. Section 208(a) of the FECA Amendments, 88 Stat. 1279, amends the FECA as follows:

> "Sec. 308. Any person (other than an individual who expends any funds or commits any act directed to the public for the purpose of influencing the outcome of an election, or who publishes or broadcasts to the public any material referring to a candidate (by name, description, or other reference) advocating the election or defeat of such candidate, setting forth the candidate's position on any public issue, his voting record, or other official acts (in the case of a candidate who holds or has held Federal office), or otherwise designed to influence individuals to cast their votes for or against such candidate

or to withhold their votes from such candidate shall file reports with the Commission as if such person were a political committee. The reports filed by such person shall set forth the source of the funds used in carrying out any activity described in the preceding sentence in the same detail as if the funds were contributions within the meaning of section 301(e), and payments of such funds in the same detail as if they were expenditures within the meaning of section 301(f)."

53. Section 208 of the FECA Amendments, 88 Stat. 1284, amends the FECA to provide that the Federal Election Commission may institute civil actions for relief, including injunctions, if there is reason to believe that a person has engaged, or may engage, in acts or practices which violate the Act. The Commission may also request the Attorney General to bring civil actions for relief, including injunctions, against violations of the Act.

Penalties

54. Title 2 U.S.C. Section 441 provides that any person who violates the registration, reporting and disclosure provisions specified in paragraphs 49, 50, 51, or 52 of this complaint shall be fined not more than $1,000 or imprisoned not more than one year, or both.

CAUSES OF ACTION

55. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they restrict and inhibit political activity by limiting the solicitation, receipt or making of contributions on behalf of political candidates, in violation of the rights of

freedom of speech and association guaranteed by the First Amendment to the Constitution.

56. The FECA and the FECA Amendments violate the rights of one or more of the plaintiffs in that they restrict and inhibit political activity by preventing candidates or their immediate family from expending personal funds where available and necessary, in violation of their rights of freedom of speech and association guaranteed by the First Amendment to the Constitution.

57. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they restrict and inhibit political activity by limiting the incidental expenses which volunteers working on behalf of political candidates may incur, in violation of their rights of freedom of speech and association guaranteed by the First Amendment to the Constitution.

58. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they limit expenditures by a candidate for federal office, and thereby restrict and inhibit the candidate's ability to communicate his ideas and positions, in violation of the rights of freedom of speech and association guaranteed by the First Amendment to the Constitution.

59. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they are designed to have, and have, the effect of favoring most incumbent officeholders and thereby disadvantaging most challengers, in violation of their rights of freedom of speech and association guaranteed by the First Amendment to the Constitution and the Due Process Clause of the Fifth Amendment to the Constitution. Incumbents have, at the government's expense, permanent offices, the

frank, expense allowances, an established staff, access to Congressional television recording services, and a variety of office supplies and expenses, none of which constitute expenditures within the FECA and the FECA Amendments when used by them for all but blatantly political purposes. Challengers can employ such valuable resources only by making expenditures which the Act limits to an amount far below the value of what is available to incumbents by virtue of their office alone. This disparity is in addition to the political advantages which naturally inhere in incumbency, such as ability to make news and wider name recognition.

60. The FECA Amendments deprive one or more plaintiffs of their constitutional rights in that they allow incumbent officeholders and successful candidates to employ surplus campaign funds to defray the expenses of their offices, thus discriminating invidiously against candidates challenging incumbents and against unsuccessful candidates for federal office, in violation of the rights of freedom of speech and association guaranteed by the First Amendment to the Constitution and the Due Process Clause of the Fifth Amendment to the Constitution.

61. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they discriminate against third parties, minor parties, and independent candidacies which rely heavily on large contributions, in violation of their rights of freedom of speech and association guaranteed by the First Amendment to the Constitution and the Due Process Clause of the Fifth Amendment to the Constitution.

62. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they discriminate against third parties, minor parties,

and independent candidacies which have not previously demonstrated their ability to capture a large percentage of the popular vote or which run candidates on a "balance of power" or "spoiler" strategy hoping to influence the policies of the major parties, in violation of their rights of freedom of speech and association guaranteed by the First Amendment to the Constitution and the Due Process Clause of the Fifth Amendment to the Constitution.

63. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they limit the expenditures of national committees of a political party in the case of campaigns for federal office in violation of the rights of freedom of speech and association guaranteed by the First Amendment to the Constitution and the Due Process Clause of the Fifth Amendment to the Constitution.

64. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they discriminate against political parties lacking a national committee, in violation of the rights of freedom of speech and association guaranteed by the First Amendment to the Constitution and the Due Process Clause of the Fifth Amendment to the Constitution.

65. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they discriminate against political parties sponsoring a candidate for President in only one State, in violation of their rights of freedom of speech and association guaranteed by the First Amendment to the Constitution and the Due Process Clause of the Fifth Amendment to the Constitution.

66. The FECA Amendments deprive one or more of the plaintiffs of their rights in that the method of appointment of the Federal Election Commission violates the constitutional separation of powers and discriminates invidiously against them in violation of the Due Process Clause of the Fifth Amendment to the Constitution.

67. The FECA Amendments deprive one or more of the plaintiffs of their right to a hearing before an impartial tribunal by entrusting administration and enforcement of the FECA, as amended, to the Federal Election Commission, in violation of the constitutional separation of powers, Article III, and the Due Process Clause of the Fifth Amendment to the Constitution.

68. The FECA Amendments deprive one or more of the plaintiffs of their rights in that the Federal Election Commission is empowered to make rules under the FECA in violation of the constitutional separation of powers and the Due Process Clause of the Fifth Amendment to the Constitution.

69. The FECA Amendments deprive one or more of the plaintiffs of their rights in that the Federal Election Commission has power to disqualify a person from becoming a candidate for election to federal office in violation of the First, Fifth, and Sixth Amendments to the Constitution.

70. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they provide, through auditing procedures, for the Federal Election Commission to inspect lists and records required to be kept by political committees of individuals who contribute more than $10, in violation of their rights of freedom of speech and association and privacy guaranteed by the First, Fourth, and Ninth Amendments to the

Constitution and of their right to due process of the Fifth Amendment to the Constitution.

71. The FECA Amendments and the FECA violate the rights of one or more of the plaintiffs in that they require political committees to register and disclose the names of those of their contributors who contribute in excess of $100, in violation of their rights of freedom of speech, association and privacy guaranteed by the First Fourth, and Ninth Amendments to the Constitution and of their right to due process of the Fifth Amendment to the Constitution.

72. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they discriminate invidiously against them by not requiring the same disclosure from incumbent officeholders of all resources available to such incumbents, such as the value of services furnished by the Senate or House recording studios or the services of certain individuals on their staffs, in violation of the right to due process of the Fifth Amendment to the Constitution.

73. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they provide that every person contributing or expending more than $100 other than by contribution to a political committee or candidate (including volunteers with incidental expenses in excess of $600) must make disclosure to the Federal Election Commission, in violation of the rights of freedom of speech, association and privacy of the First, Fourth, and Ninth Amendments to the Constitution and of their right to due process of the Fifth Amendment to the Constitution.

74. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they require any person who expends funds or commits any act for the purpose of influencing the outcome of an election or who publishes or broadcasts to the public any material advocating the election or defeat of a candidate, setting forth a candidate's position on any public issue, his voting record or any official acts to file reports with the Commission as if such person were a political committee, in violation of the rights of freedom of speech, association and privacy of the First, Fourth, and Ninth Amendments to the Constitution.

75. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they provide criminal penalties for violation of the disclosure provisions of the statutes, in violation of the rights of freedom of speech, association and privacy of the First, Fourth, and Ninth Amendments to the Constitution.

76. The FECA and the FECA Amenuments violate the constitutional rights of one or more of the plaintiffs in that they restrain and inhibit individual political activity by limiting to $1,000 the independent (not on behalf of a candidate) expenditures of any person relative to an identified candidate, in violation of the rights of freedom of speech and association of the First Amendment to the Constitution.

77. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they exclude from the definition of "political committee" committees registered for less than the period of time prescribed in the statute, thus invidiously discriminating against such committees by prohibiting them from

participating in the political process for a six-month period, in violation of the rights of freedom of speech and association guaranteed by the First Amendment to the Constitution.

78. The FECA and the FECA Amendments provide that the government may bring criminal prosecutions against anyone who violates or is about to violate Section 608 of the FECA and Section 9008 of the Internal Revenue Code of 1954. The risk of criminal prosecution deters and restrains one or more of the plaintiffs and in certain instances constitutes a prior restraint of their exercise of their rights of freedom of speech and of association in violation of the First Amendment to the Constitution and deprives one or more of the plaintiffs of due process of law in violation of the Due Process Clause of the Fifth Amendment to the Constitution.

79. The FECA, the FECA Amendments, and Subtitle H of the Internal Revenue Code of 1954 deprive one or more of the plaintiffs of their constitutional rights in that federal tax money is thereby used to support political movements and organizations, in violation of the restrictions imposed on the federal taxing and spending power by the First Amendment to the Constitution.

80. The FECA, the FECA Amendments, and Subtitle H of the Internal Revenue Code of 1954 deprive one or more of the plaintiffs of their constitutional rights in that federal tax money is thereby used to support only certain political parties in violation of the restrictions imposed on the federal taxing and spending power by the First Amendment to the Constitution.

81. The FECA, the FECA Amendments, and Subtitle H of the Internal Revenue Code of 1954 deprive one or more of the plaintiffs of their constitutional rights in that

federal taxpayers are permitted to designate neither their preference for parties nor for candidates, in violation of the rights of freedom of speech and association guaranteed by the First Amendment to the Constitution.

82. The FECA, the FECA Amendments, and Subtitle H of the Internal Revenue Code of 1954 violate the constitutional rights of one or more of the plaintiffs in that they establish officially supported political parties and discriminate against third parties, minor parties and independent candidates, against parties sponsoring a candidate for President in less than ten States, against candidates with substantial support in less than twenty States, against parties who have neither nominating conventions nor primaries, and against independent candidates not nominated by conventions or primaries. These provisions violate the rights of freedom of speech and association of the First Amendment to the Constitution and the right to due process of law of the Fifth Amendment to the Constitution.

83. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they empower the Federal Election Commission and the Attorney General to bring civil actions, including proceedings for injunctions against any person who has engaged or who may engage in acts or practices which violate the Act. The risk of being subject to civil injunction proceedings deters and restrains one or more of the plaintiffs and in certain instances constitutes a prior restraint of the exercise of their rights of freedom of speech and association of the First and Fifth Amendments to the Constitution.

84. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they limit the freedom of the press by exempting

news stories, commentaries, and editorials from the statutory definitions of "expenditure" but not from the statutory definitions of "contribution," thus subjecting those press functions to regulation, in violation of the rights of a free press guaranteed by the First Amendment to the Constitution.

85. Titles I, II, III, and IV of the FECA Amendments deprive one or more of the plaintiffs of the rights of freedom of speech and association and of due process of law under the First and Fifth Amendments to the Constitution because they are excessively vague and overbroad.

86. Titles I, II, III, and IV deprive one or more of the plaintiffs of their retained rights under the Ninth Amendment to the Constitution.

87. The FECA, the FECA Amendments, and Subtitle H deprive one or more of the plaintiffs of their rights in that these statutes will diminish the financial and other political support received by them from adherents and supporters, all in violation of the constitutional provision enumerated in paragraphs 55-86 of this complaint.

88. Unless application of the FECA, the FECA Amendments, and Subtitle H of the Internal Revenue Code of 1954 against the plaintiffs is enjoined by this Court, plaintiffs will suffer irreparable injury and will be unable to exercise their constitutional rights to participate effectively in the political process, to communicate their views on issues of public policy, to support candidates for federal office, and to compete without discrimination in the electoral process.

Prayer for Relief

WHEREFORE, plaintiffs pray that the Court make application for the convening of a three-judge district court and that said three-judge court hear this action, and upon such hearing to:

1. Order, adjudge, decree and declare that the FECA, the FECA Amendments, and Subtitle H are repugnant to the Constitution of the United States, and that said statutes violate plaintiffs' rights under the Constitution of the United States; and further

2. Permanently enjoin and restrain defendants, their agents and assistants from the use, operation, enforcement, execution and application of the FECA, the FECA Amendments, and Subtitle H in any and all respects in which the same may be found to be repugnant to the Constitution of the United States; and further

3. Grant such order and further relief as to the Court may seem just and proper, together with the costs and disbursements of this action.

Plaintiffs further pray, pursuant to Section 315(a) of the FECA, 88 Stat. 1285, 2 U.S.C. Section 437h, that this Court immediately certify, to the United States Court of Appeals for the District of Columbia Circuit all questions of constitutionality raised herein.

Dated: February 7, 1975

/s/ Brice M. Clagett
Brice McAdoo Clagett

/s/ John R. Bolton
John R. Bolton
888 Sixteenth Street, N.W.
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127 Wall Street
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Attorneys for the Plaintiffs

Order of Court of Appeals
(February 19, 1975)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Caption Omitted in Printing]

Before: Bazelon, Chief Judge; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon, Robb and Wilkey, Circuit Judges

ORDER

This matter is before the Court upon the certification of constitutional questions from the District Court, Corcoran, J., on January 24, 1975. In lieu of a record, the entire file has been transmitted by the Clerk of the District Court. Contained within that file was defendants' Motion to Dismiss, upon which no action was taken below. Plaintiffs' opposition thereto was filed in this Court on January 29, 1975.

Upon consideration of the foregoing, it is hereby

ORDERED by the Court that this matter is preliminarily deemed to have been properly certified to this Court by the District Court below, pursuant to Section 315(a) of the Federal Election Campaign Act, *as amended*. This Court shall proceed to consider the instant matter *en banc*, pursuant to Section 315(a), 28 U.S.C. §46(c) and Rule 35 (a), Fed. R. App. P. It is

FURTHER ORDERED by the Court that the Clerk inquire of each of the parties by letter as to their expectations regarding the need for the taking of evidence, or the hearing of witnesses, so that appropriate procedures may be considered for adoption by the Court.

FURTHER ORDERED by the Court that the parties file additional memoranda and/or briefs on the jurisdictional questions (including both the motion to remand and the motion to dismiss) according to the following schedule:

Defendants	shall file within 20 days of the entry of this order
Plaintiffs	shall file their answering papers within 15 days thereafter
Defendants	a reply, if any, shall be filed within 5 days

The Clerk shall thereafter schedule oral argument on all jurisdictional contentions.

Per Curiam

Letter of Clerk, Court of Appeals
(February 20, 1975)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

HUGH E. KLINE
Clerk

Washington, D.C. 20001
February 20, 1975

IN RE: No. 75-1061 – James L. Buckley, United States Senator from the State of New York, et al v. Honorable Francis R. Valeo, Secretary, United States Senate, et al

Brice M. Clagett, Esquire
888 16th Street, N.W.
Washington, D.C. 20006

Morton Hollander, Esquire
U.S. Department of Justice
Washington, D.C. 20530

Lloyd N. Cutler, Esquire
1666 K Street, N.W.
Washington, D.C. 20006

Gentlemen:

By order of the Court entered on February 19, 1975, the Clerk is instructed to "inquire of each of the parties by letter as to their expectations regarding the need for the taking of evidence, or the hearing of witnesses, so that appropriate procedures may be considered for adoption by the Court."

This preliminary inquiry made in the interest of expedition, of course does not indicate any stance of the Court vis-a-vis the currently pending motions.

Depending upon the foreseen need for adducing evidence, such procedures may include appointment of a special master, whose cost will be apportioned among the parties as justice may require.

The parties are invited to recommend fact-finding procedures which meet their own requirements for the offering into evidence of documents, depositions, live witnesses or other contemplated proffers. The Court is mindful that proponents of the motion to remand believe that, "The trial court is obviously better structured than this Court to perform that [development of a factual record] task expeditiously." Defendants are therefore asked to respond to this inquiry as if in the alternative, without prejudice to their pending motions.

Responses in compliance with this letter should be submitted on or before March 3, 1975.

Very truly yours,
HUGH E. KLINE, Clerk

/s/ Robert A. Bonner
By: Robert A. Bonner
Chief Deputy Clerk

Order of Court of Appeals
(March 14, 1975)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Caption Omitted in Printing]

Before: BAZELON, Chief Judge, and WRIGHT, McGOWAN, TAMM, LEVENTHAL, ROBINSON, MacKINNON and WILKEY, Circuit Judges

ORDER

This matter is before the court for consideration of fact-finding procedures to be adopted pursuant to the order of this court dated February 19, 1975, and further pursuant to the parties' responses to the inquiry of our Clerk dated February 20, 1975 on the instant subject. It appears to the court from the responses to the Clerk's letter filed that all parties approve of commencement of fact-finding prior to disposition of the pending motions to remand and to dismiss. Therefore, it is

ORDERED by the court that the parties file proposed findings of fact, and in conjunction with each such separate proposed finding shall file a documented offer of proof in support thereof, such documented offer to consist of actual documents, affidavits, depositions, or other evidence in tangible form, these filings to be made within twenty (20) days of this order. Within fifteen (15) days of the above filing date, the parties will file responses indicating which of the first round of submitted proposed findings of fact they admit, which they admit in part, and which they deny. As to those proposed findings of fact

in whole or in part not admitted, each party will that day file documented offers of proof establishing what it submits the fact to be. It is

FURTHER ORDERED by the court that oral argument on the pending motions to remand and to dismiss will be heard on April 2, 1975. Counsel will be notified as to the time for oral argument at a later date.

Per Curiam

For the Court
/s/ Hugh E. Kline
Hugh E. Kline
Clerk

Order and Memorandum of Court of Appeals
(April 14, 1975)

Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S.App.D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

James L. BUCKLEY et al., Plaintiffs,

v.

Hon. Francis R. VALEO et al., Defendants,

Center For Public Financing of Elections, Common Cause, The League of Women Voters of the United States, Chellis O'Neal Gregory, Norman P. Jacknis, Susan B. King, Daniel R. Noyes, Mrs. Edgar B. Stern, Charles P. Taft, John W. Gardner, and Ruth Clusen, Intervening Defendants.

No. 75-1061.

United States Court of Appeals, District of Columbia Circuit.

Argued April 2, 1975.

Decided April 14, 1975.

In a suit for declaratory and injunctive relief against certain provisions of the Federal Election Campaign Act of 1971, of the 1974 amendments and of Subtitle H of the Internal Revenue Code, i. e., the dollar check-off provisions, on constitutional grounds, the United States District Court for the District of Columbia, Howard F. Corcoran, J., 387 F.Supp. 135, denied an application for a three-judge district court and certified constitutional questions to the Court of Appeals. The Court of Appeals held that under Campaign Act section setting forth special procedure for review of constitutional questions by certification to the Court of Appeals, the Court of Appeals, even assuming it could properly appoint its own master to make report of proposed findings, would remand the record to the District Court to identify constitutional issues in the complaint, take necessary evidence, make factual findings and certify constitutional questions arising. To protect against the contingency that the Supreme Court might eventually hold that constitutional issues arising under the statute for public financing of presidential elections should be decided by a three-judge court, district court would be advised to certify the need for a three-judge court as to such issues to the chief judge of the circuit in order that there might be parellel proceedings in that court and in the Court of Appeals with reference thereto.

Motion for remand granted to extent indicated, return of record ordered, and final action on defendants' motion to dismiss deferred.

Bazelon, Chief Judge, dissented and filed opinion.

For opinion on remand see —— F.Supp. ——.

For subsequent opinion of Court of Appeals see —— U.S.App.D.C. ——, —— F.2d ——.

1. Courts ⇐405(14)

Under Federal Election Campaign Act section setting forth special procedure for review of constitutional questions by certification to Court of Appeals, Court of Appeals, even assuming it could properly appoint its own master to make report of proposed findings, remanded record to district court to identify constitutional issues in complaint, take necessary evidence, make factual findings and certify constitutional questions arising. Federal Election Campaign Act Amendments of 1974, § 315(a), 2 U.S.C.A. § 437h(a); 26 U.S.C.A. (I.R.C. 1954) §§ 9001 et seq., 9011(b); 28 U.S.C.A. §§ 2282, 2284.

2. Courts ⇐406.9(10)

To protect against contingency that Supreme Court might eventually hold that constitutional issues arising under statute for public financing of presidential elections should be decided by three-judge court, district court was advised on remand to certify need for three-judge court as to such issues to chief judge of circuit in order that there might be parallel proceedings in that court and in Court of Appeals with reference thereto. Federal Election Campaign Act Amendments of 1974, § 315(a), 2 U.S.C.A. § 437h(a); 26 U.S.C.A. (I.R.C. 1954) §§ 9001 et seq., 9011(b); 28 U.S.C.A. §§ 2282, 2284.

Before BAZELON, Chief Judge, and WRIGHT, McGOWAN, TAMM, LEVENTHAL, ROBINSON, MacKINNON and WILKEY, Circuit Judges.

ORDER

PER CURIAM.

On consideration of the briefs, argument, and record made in connection with the pending motions to dismiss and to remand this action to the District Court, it is hereby

Ordered by the court that the motion to remand is granted to the extent indicated in the attached memorandum. The record herein is remanded together with the second round of filings of proposed findings of fact and supporting documents due on April 18, 1975 pursuant to our order of March 14, 1975. It is

Further ordered by the court that the District Court shall return the record to this court as soon as possible, but in no event later than May 19, 1975. It is

Further ordered by the court that final action by this court on defendants' motion to dismiss is deferred pending return of the record.

Chief Judge BAZELON dissents for the reasons set forth in his attached statement.

MEMORANDUM

By the attached order, we seek to conform our treatment of this matter with the special review procedure set forth in Section 315(a) of the Federal Election Campaign Act, as amended (2 U.S.C. § 437h). That section requires that after the instituting of an action "as may be appropriate to construe the constitutionality of any provision of this Act or of section 608, 610, 611, 613, 614, 615, 616, or 617 of title 18, United States Code,"

BEST COPY AVAILABLE

then "[t]he district court immediately shall certify all questions of constitutionality of this Act or of section 608, 610, 611, 613, 614, 615, 616, or 617 of title 18, United States Code to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc."

We are remanding the record to the District Court to do the following:

1. Identify constitutional issues in the complaint.
2. Take whatever may be necessary in the form of evidence—over and above submissions that may suitably be handled through judicial notice, as of legislative facts, supported by legislative history or works reasonably available, to the extent not controverted in material and substantial degree.
3. Make findings of fact with reference to those issues.
4. Certify to this court constitutional questions arising from steps 1, 2, and 3.

As indicated in the attached order, the District Court will return the record, as augmented on remand, to this court immediately, and in no event later than May 19, 1975.

[1] We follow this procedure without ruling on the contention of defendants that such a procedure is required by the "certify" provision of Section 315(a), and that this provision must be read in conjunction with the rulings on the provision for certification of questions to the Supreme Court.[1] We would reach the same result, at least at this juncture, even assuming that Section 315(a) establishes a *sui generis* procedure and contemplates that, in the interest of expedition, the Court of Appeals properly proceeds by appointing its own master to make a report of proposed findings. Our order is consonant with both these approaches, in practical aspect, and it is unnecessary to make a choice between them at this time. It is also consistent with the intention of Congress for expedition in appellate disposition.[2]

Certain of the parties have questioned whether Subtitle H of the Internal Revenue Code (the public financing of presidential elections provisions) is subject to the procedures of Section 315(a). They cite 26 U.S.C. § 9011(b), which by its plain words commands a different review procedure—the convening of a three-judge court—for review of Chapter 95 of Subtitle H. It is the view of the other parties that the review provisions set forth in Section 315(a) are sufficiently broad that *all* constitutional questions must be certified to this court.

[2] To protect against the contingency that the Supreme Court might eventually hold that these issues should be decided by a three-judge court, either under 26 U.S.C. § 9011(b) or as to Chapter 96 under 28 U.S.C. §§ 2282, 2284, we suggest to the District Court that it certify the need for a three-judge court as to Subtitle H to the Chief Judge of this Circuit, in order that there may be parallel proceedings in that court and in this court with reference thereto.

1. *See* Lowden v. Northwestern Nat. Bank & Trust Co., 298 U.S. 160, 162, 56 S.Ct. 696, 80 L.Ed. 1114 (1936); Atlas Ins. Co. v. Southern, Inc., 306 U.S. 563, 572–573, 59 S.Ct. 657, 83 L.Ed. 987 (1939); Emsheimer v. New Orleans, 186 U.S. 33, 22 S.Ct. 770, 46 L.Ed. 1042 (1902).

2. The course we have designated will help avoid future embarrassment that might result if we chose one or another of the approaches offered by counsel and the Supreme Court were later to determine we had exceeded our authority.

BAZELON, Chief Judge (dissenting):

I am strongly opposed to remand and severance at this time, as I view both unnecessary and likely to cause serious delay in deciding these vital matters. The plain words of sections 315(a)[1] and 9011(b)[2] notwithstanding, I cannot conceive that Congress wishes the constitutional questions arising in connection with regulation of private campaign financing and the institution of limited public campaign financing be decided in two or three separate forums.

Nor can I see what specific advance will come from a remand to formulate constitutional questions since the District Court's formulation can not be realistically binding either upon the parties or upon this court on review. The section 315(a) review provision really involves certification of an entire case and not isolated questions such as those covered by direct certification to the Supreme Court or the United States Temporary Emergency Court of Appeals. This is because the plaintiffs' attack is upon the facial limitations imposed in the challenged statutes, rather than upon application of those statutes to a murky fact situation.

The majority cites three Supreme Court cases holding that questions raised by certification must be precisely framed, and tailored to the specific controlling facts.[3] But those cases deal primarily with the problem of certification of questions of state law. In the instant case the constitutional questions arising from the complaint are answerable in light of legislative facts, where difficulties of framing questions for the court would be abstract, unrelated, general or admitting of different answers since they relate chiefly to facial statutory dollar limitations. There is no danger here that this court will "declare a mere abstraction which might seem too narrow or too broad thereafter when the facts were shown forth." 298 U.S. at 163, 56 S.Ct. at 698. In another context the *Lowden* court comments about the error of assuming identical meanings each time the same word appears in statutory materials, which is very relevant to our inquiry into the meaning of the word "certify:" "when things are called by the same name, it is easy for the mind to slide into an assumption that the verbal identity is accompanied in all its sequences by identity of meaning." *Id.*

Atlas, supra, involves the applicability of various defenses in a state action over cancellation of insurance policies. The Supreme Court refused to answer questions certified to it because of this defect: "the certified questions are incapable of categorical answer and the questions which they suggest can be properly answered only by reframing the questions certified or giving qualified answers to them." 306 U.S. at 572, 59 S.Ct. at 661. This case, too, involves no special statutory review procedure and deals with adjudicatory facts, the shape of which may affect the decisions of law. In the instant case the constitutional questions arising from the complaint are answerable in light of legislative facts, where dif-

1. That is section 315(a) of the Federal Election Campaign Act, as amended, added by section 208(a) of the Federal Election Campaign Act Amendments of 1974.

2. 26 U.S.C. § 9011(b) contained within Chapter 95 of the Subtitle H and limited to "this chapter."

3. See Lowden v. Northwestern Nat. Bank & Trust Co., 298 U.S. 160, 162, 56 S.Ct. 696, 697, 80 L.Ed. 1114 (1936); Atlas Ins. Co. v. Southern, Inc., 306 U.S. 563, 571–573, 59 S.Ct. 657, 83 L.Ed. 987 (1939); Emsheimer v. New Orleans, 186 U.S. 33, 22 S.Ct. 770, 46 L.Ed. 1042 (1902). In *Lowden, supra*, the Court took the view that it would not answer questions on certification that were "abstract" and "unrelated," "unnecessarily general," or "which admit of one answer in one set of circumstances and a different answer in another; the differentiating circumstances being imperfectly disclosed." But there, there was no original jurisdiction in the Supreme Court, and the case was intended to go to judgment below. Here, no party or applicant for intervention argues that the statute contemplates judgment in the District Court. That said, the latitude for certification in the instant case is obviously broader. *Lowden, supra*, involved the technicalities of applying section 77 of the Bankruptcy Act to a complicated railway reorganization. While it is true that the trial judge did not formulate specific questions in the case at bar, neither is it the kind of case in which the questions which would be answered by this

marily with adjudicatory facts, or events which are themselves in dispute between the parties, and upon the resolution of which disputes by the trier of fact, application of law might well turn. And the certification involved, as I just noted, was of independent legal questions not the interrelated questions presented by this major constitutional case. At issue in this case is whether statutory prohibitions actually infringe upon constitutional rights. The facts bearing upon these questions are—we should assume absent specific evidence of particular adjudicatory disputes—legislative facts. In no way is the trial court better qualified than we to isolate and to decide those many questions whose resolution will turn on such legislative facts. Further, if the court below chooses to immerse itself in the long record made while the matter was on our docket, even more time may be lost.

The court tells us it does not decide whether these Supreme Court cases and their gloss on "certification" requires a formal certification procedure. But I perceive no other explanation for the court's action. Even if we ignore the term "remand," the practical effect of the court's decision is still to require compliance with these decisions on "certification." As to the majority's apparent view that this case must conform to normal judicial procedures of initial decision and appellate review, I think that the entire thrust of the review provision added by the 1974 Amendments was intentionally to make this case *sui generis*. In that regard, I would prefer selection as Special Master of an Article III judge to consider discovery requests and organize the already bulky factual presentations. The parties could then make motions for judgment in this court on the basis of the factual submissions. The majority's desire to "regularize" proceedings seems based on an unnecessarily technical view of our jurisdiction, a view motivated more, I take it, by a fear that the Supreme Court might reverse on such grounds than on a serious concern that assumption of jurisdiction would tamper with some important policy of judicial administration or impair the rights of any party or potential intervenor. I agree with plaintiffs' counsel when he stated at oral argument that any such fears should not be given significant weight. The Supreme Court, as well as we, can perceive the *sui generis* nature of this case and of Congress' command of expedition. And it will surely conclude, as I think we must, that no policy of judicial administration prevents a "nonregular" treatment of the case.

If this case is remanded to the District Court, and if discovery proceeds there, it may be utterly impossible for the May 19th deadline to be met. As it is, that date would only give this court a bare six weeks to hear objections to the District Court's formulation of questions and briefing and arguments on the merits before the July 1, 1975 date for disbursements to finance the nominating

ferent outcomes will turn on interpretation rather than disputed events shared by the parties.

The *Emsheimer* case likewise involves a certification to the Supreme Court in a case where judgment below was required. There it was said, "The entire record should not be transmitted and a decision asked on the whole case," but rather that the certificate should "contain a proper statement of the facts on which such question or proposition of law arises." One test in *Emsheimer* is that each question of law "can be definitely answered without regard to other issues of law in the case." 186 U.S. at 42, 22 S.Ct. at 773. Taking that as a standard, I do not see how this court could review a interrelated multi-statute regulatory scheme as is raised herein.

conventions pursuant to 26 U.S.C. § 9008(e). And, of course, this court and its personnel would have to re-immerse itself in the case and duplicate work performed by the District Court. A briefing schedule which contemplated appointment of a special master by this court would leave little time to spare for decisions of this matter, and I totally fail to perceive how remand will speed things up. This delay is particularly unfortunate considering the fact that the court has had the motion for remand under advisement officially since early February. The delay in ruling on the motion to remand is in my view cause enough to deny it, considering the further delay granting it will cause.

Further, I lay great emphasis upon section 315(a)'s use of the word "immediately" in the phrase "immediately shall certify." Some have argued that "immediately" here means the equivalent of "certify prior to deciding those constitutional questions it has formulated." But I would read the use of the word "immediately," in conjunction with the absence of any time provision relative to the District Court to mean that the case should be transmitted to this court immediately, if the trial judge finds any valid constitutional question raised by any person with standing to raise it. That was the understanding of the trial judge and I concur in it. The Memorandum and Order of January 24, 1975 specifically stated: "The Court specifically finds that the plaintiffs raise substantial constitutional questions, and that at least the four individual plaintiffs have standing to seek judicial review of the provision in question."

That being the case, I am of the view that our evidentiary order of March 14, 1975, in conjunction with another order appointing a Special Master to organize legislative facts submitted by the parties would provide a sufficient framework to focus and refine constitutional questions without remand. Such a procedure would also be more in harmony with the statute's call for expedition and avoid wasteful duplication. For these reasons, I would deny the motion for remand and dissent from the decision of the court.

Order of District Court
(April 25, 1975)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Caption Omitted in Printing]

ORDER

This three-judge Court, having been convened to consider the complaint filed herein for a declaratory judgment and an injunction restraining the enforcement or operation of provisions of Subtitle H of the Internal Revenue Code of 1954 for repugnance to the Constitution of the United States, and having determined that the proceedings herein should parallel proceedings pending in the United States Court of Appeals for the District of Columbia Circuit as to Subtitle H and other Acts of Congress,

It is, this 25th day of April, 1975, by the Court, *sua sponte,*

ORDERED that, pursuant to 28 U.S.C. § 2284(5), the Honorable Howard F. Corcoran, as one of the judges of this three-judge Court, be and hereby is designated to

1. Identify the constitutional issues raised with respect to Subtitle H;

2. Take whatever may be necessary in the form of evidence – over and above submissions that may suitably be handled through judicial notice, as of legislative facts, supported by legislative history or works reasonably available, to the extent not controverted in material and substantial degree;

3. Make findings of fact with reference to those issues; and

4. Report to this Court the constitutional questions arising from steps 1, 2, and 3.

The action of the single judge shall be reviewable by the full three-judge court at any time before final hearing. The case will be heard and determined on the merits by the three judges at the earliest practicable date.

/s/ David L. Bazelon
United States Circuit Judge

/s/ Spottswood W. Robinson, III
United States Circuit Judge

/s/ Howard F. Corcoran
United States District Judge

Letter from William T. Lake to John R. Bolton
(May 1, 1975)

WILMER, CUTLER & PICKERING
1666 K Street, N.W.
Washington, D.C. 20006
May 1, 1975

John R. Bolton, Jr., Esquire
Covington & Burling
888 16th Street, N.W.
Washington, D.C. 20006

Dear John:

You have asked whether Marian Pearlman can supply a further breakdown of the contribution figures for the 1972

McGovern campaign contained in her affidavit submitted in connection with the *Buckley* Case. Specifically, you asked whether the figures for contributions over and under $1,000 can be broken down into shorter time periods.

Marian informs me that her records do not make it possible to break down further the figures for the pre-January 1971 period or the January 1971-February 1972 period. However, it is possible to provide the following further breakdown of the February 1972-April 7, 1972 period described in paragraph 9 of the affidavit.

First, the January 1971-February 1972 period for which figures are given in paragraph 8 of the affidavit is the period up to February 1, 1972.

Second, between February 1, 1972 and March 10, 1972, a total of 2,984 contributions were received, in the total amount of $240,278. The average contribution was $80.52. Of these contributions, 21 exceeded $1,000, for a total of $173,571. Considering the only first $1,000 of any contribution, the total received during this period was $87,707.

Third, between March 11, 1972 and April 6, 1972, a total of 9,951 contributions were received, in the total amount of $271,405. The average contribution was $27.27. Of these contributions, ten exceeded $1,000, for a total of $29,704. Considering only the first $1,000 of any contribution, the total received during this period was $251,701.

For the period after April 7, 1972, the figures in the affidavit for contributions of $100.00 or less were taken from the McGovern campaign records and are broken down in paragraph 11(a) of the affidavit according to reporting period. The figures in the affidavit for contributions over $100.00 were taken from the General Accounting Office

compilation attached to the affidavit, which gives only the totals for the period between April 7, 1972 and December 31, 1972.

Sincerely,

/s/ Bill
William T. Lake

Order of District Court
(August 15, 1975)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Caption Omitted in Printing]

ORDER

This Court having, by order filed April 25, 1975, designated the Honorable Howard F. Corcoran, one of the judges of this three-judge Court, to identify the constitutional issues raised herein with respect to Subtitle H of the Internal Revenue Code of 1954, to take evidence and make findings of fact with reference to those issues, and to report to this Court the constitutional questions arising from those steps; and

Judge Corcoran having duly engaged in the activities aforesaid, and having by order filed May 28, 1975, duly reported to this Court his action and the constitutional questions which this Court is called upon to consider in connection with Subtitle H, and no party having objected to Judge Corcoran's action or report or having sought review thereof by the full court;

It is, this 15th day of August, 1975, by the Court

ORDERED that the aforesaid action and report of Judge Corcoran be and hereby are confirmed in all respects.

/s/ David L. Bazelon
United States Circuit Judge

/s/ Spottswood W. Robinson, III
United States Circuit Judge

/s/ Howard F. Corcoran
United States District Judge

Supreme Court, U. S.
FILED
SEP 30 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

Nos. 75-436 and 75-437

JAMES L. BUCKLEY, *et al.*,

Appellants,

v.

FRANCIS R. VALEO, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JOINT APPENDIX (VOL. II - Part A)
DISTRICT COURT FINDINGS

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JOINT APPENDIX (VOL. II)
DISTRICT COURT FINDINGS

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES L. BUCKLEY, et al.,
Plaintiffs,

v. **Civil Action No. 75-0001**

HON. FRANCIS R. VALEO, et al.,
Defendants.

---

[1]

Memorandum and Order of the United States District Court for the District of Columbia (May 19, 1975)

By Order of April 14, 1975, the Court of Appeals remanded the record in the instant case to this Court to do the following:

1. Identify constitutional issues in the complaint.
2. Take whatever may be necessary in the form of evidence – over and above submissions that may suitably be handled through judicial notice, as of legislative facts, supported by legislative history or works reasonably available, to the extent not controverted in material and substantial degree.
3. Make findings of fact with reference to those issues.
4. Certify to this Court constitutional questions

arising from steps 1, 2, and 3.[1]

This Court was ordered to return the augmented record to the Court of Appeals no later than May 19, 1975.

A. FINDINGS OF FACT

The findings of fact of the Court are submitted in three parts.

---

[1] Buckley v. Valeo, No. 75-1061 (D.C. Cir. April 14, 1975) (*en banc*). *Compare* Buckley v Valeo, 387 F. Supp. 135 (D.D.C. 1975).

[2]

PART I includes "Findings of Fact Agreed to by the Parties" which were compiled by counsel. They are hereby adopted by the Court.[2]

PART II includes "Statistical Findings of Fact" which were also compiled by counsel and agreed by them.[3] This Part primarily consists of statistics drawn from the doctoral dissertation, deposition and affidavit of Roland J. Cole, the plaintiffs' expert, and from two affidavits of J.J. Conway, the defendants' expert, and the ten-volume Common Cause Campaign Monitoring Project. All of the underlying factual data in this Part is in the record of this case. The Court adopts these findings.

In addition to assembling the material in PARTS I and II, counsel for the parties have conducted extensive discovery through interrogatories, admissions, production of documents and depositions. Additionally, numerous affidavits have been submitted. In view of the limitations of time imposed by the remand order counsel considered such

discovery techniques to be more expeditious and productive than the conduct of evidentiary hearings, and so informed the Court. Accordingly, no in-court evidentiary hearings were conducted, although they were permitted (but not required) by the remand order. Based upon the evidence adduced through the foregoing discovery, counsel for the parties submitted proposed findings.

---

[2] In submitting "agreed" findings of fact, the parties have agreed to such findings for the purposes of this case only and have reserved the right to argue all inferences and assumptions arising therefrom.

[3] *See* note 2 *supra.*

[3]

PART III includes the "Court Findings of Fact" which were adduced from those proposed findings.[4]

B. CONSTITUTIONAL QUESTIONS

In the same cooperative spirit with which they arrived at agreed findings of fact, counsel for the parties, in conjunction with the Court, have agreed to the constitutional questions in the case. Those questions, keyed to the First Amended Complaint, are set forth in PART IV hereof and are hereby certified to the Court of Appeals.

C. ORDER

The Clerk of the District Court is hereby ordered to return forthwith to the Clerk of the Court of Appeals the augmented record of the above-captioned action.

/s/ Howard F. Corcoran
Judge

Dated: May 19, 1975

---

[4] In its findings of fact, the Court has allowed expert opinion testimony from Senator Buckley, former Senator McCarthy and Congressman Steiger. *Compare Fed. R. Evid.* 702. Furthermore, this Court is concerned primarily with typical adjudicative facts. *See* 56 F.R.D. 183, 201-207 (1973).

The Court declined to make findings from two affidavits, one from Max Palevsky, submitted by plaintiffs, and one from Marian Pearlman, submitted by defendants, since the affiant Palevsky had not been subjected to deposition examination. The parties may request leave of court to file a supplemental submission after Palevsky has been deposed.

Findings of Fact
(May 19, 1975)

[1]

I. FINDINGS OF FACT AGREED TO BY THE PARTIES[1]

1. The American political process encompasses a wide variety of activities by governmental units and by individuals, groups, and organizations perceiving an interest in the actions of such units. Such activities include campaigns for elective office, the formulation of proposals, plans, and programs for legislative or executive action, debate over

whether or not and in what form such proposals, plans, and programs should be implemented, and debate over the effects of programs and plans eventually implemented. Such activities are relatively continuous, although particular activities may be engaged in more at one time than another.

2. Activities occurring during political campaigns affect the proposals, plans and programs formulated and debated for legislative or executive action, and also affect the debate over the effects of programs and plans already implemented. Activities

---

[1] Federal defendants do not join in submitting as agreed facts paragraphs 28, 101-03, 105, 108-111, 118, 124, 128, 130-32, 136-45, 147, and 158-64.

occurring between campaigns and involving debate over proposals, plans and programs for legislative and executive action, and the effects of programs and plans already implemented, affect the outcome of political campaigns.

3. Important shifts in public opinion on political issues occur between campaigns for elective office.

4. Electoral outcomes are affected by, *inter alia:* the personality of each of the candidates, incumbency, the relative availability of campaign money, the campaign organization of each candidate, coverage of each candidate by the media, international events, domestic events, the structure of each Party, each candidate's identification with particular issues, the issue orientation of each candidate, voter predisposition, the organization of interested groups, and the personal life of each candidate. Each factor will have

a different effect in different elections.

5. Citizens desiring to participate in, and affect the outcome of, the political process in order to further their ideological, economic or political goals may engage in a variety of activities such as, *inter*

[3]

alia:

a) joining an organization dedicated to those gaols;

b) contributing money to such organizations;

c) engaging in demonstrations over appropriate issues;

d) organizing and attending rallies intended to publicize particular viewpoints;

e) making financial contributions to those organizing such rallies;

f) attending and speaking at public hearings;

g) distributing handbills stating appropriate views;

h) paying for the distribution of such handbills;

i) lobbying for or against legislation;

j) writing letters to officeholders expressing one's views;

k) writing books;

l) financing books;

m) organizing like-minded citizens;

n) drafting and circulating petitions;

o) publishing a newspaper or periodical;

p) producing a radio or television program;

q) buying advertisements in periodicals, newspapers, or the electronic media;

r) appearing on radio or television programs;

s) making speeches;

[4]

t) organizing or sponsoring seminars or teach-ins;

u) running for elective office;

v) contributing financial support to candidates for elective office;

w) contributing personal services to candidates for elective office;

x) contributing other things of value to candidates for elective office;

y) using personal resources to campaign for elective office;

z) exercising the powers of elective or appointive office;

aa) employing resources available to elected officials to do the above;

bb) engaging in litigation;

cc) financing litigation;

dd) doing favors for voters.

The extent to which an individual or group engages in such activities depends on the individual or group's political, social and economic views, needs, interests, intensity of conviction and access to appropriate resources. Such views, needs, interests, intensity of conviction and access to resources differ from individual to individual, from group to group and from time to time. Difficulty in engaging in one kind of activity may induce an individual to engage instead

[5]

in a different activity. The activities described above will affect the results of the political process.

6. Political campaigns seek to gather support for political candidates and parties, and to translate such support into sufficient votes to win elections. They may serve to reinforce the voting intentions and party loyalties (where applicable) of those whose votes the candidates could normally expect to receive. They arouse persons indifferent at the outset of the campaign and induce them to vote. Finally, they convert some voters whose initial intentions were to vote for the candidate's opponent.

7. Political campaigns provide information to the voting public on matters such as: candidate and party identification; issues of public importance and concern; the candidates' philosophy, ideas, positions on issues of public importance and concern, and programs; the candidates' reactions to the statements and positions of his or her opponents; and current events relevant to the impending election.

8. A vigorous campaign can increase the name recognition of a candidate for federal office.

[6]

9. Until April 7, 1972, the effective date of the Federal Election Campaign Act of 1971, reports concerning contributions to candidates for federal elective office were incomplete in many cases.

10. The following table shows (a) the estimated resident population eligible to vote in federal elections for the period 1960-1972, (b) the total number of votes cast for candidates for President and for the House of Representatives, and (c) the percentages of the eligible population actually voting for those offices in those years:

YEAR	Estimated resident population of voting age	VOTE CAST: For President (in 1000's)	Percent of voting age population	For U.S. Representative (in 1000's)	Percent of voting age population
1960	109,674	68,838	62.8	64,133	58.5
1962	111,231	(x)	(x)	51,261	46.1
1964	114,085	70,645	61.8	65,886	58.1
1966	116,636	(x)	(x)	52,900	45.4
1968	120,285	73,213	60.9	66,109	55.2
1970	124,498	(x)	(x)	54,173	43.5
1972	139,643	77,719	55.7	71,188	51.0

Statistical Abstract of the United States 1974, at 437.

[7]

11. The Consumer Price Index was 4.7% higher in 1964 than it was in 1960, 17.5% higher in 1968 than it was in 1960, 41.3% higher in 1972 than it was in 1960, and 66.5% higher in 1974 than it was in 1960 (yearly average figures). In October, 1974, the month the FECA Amendments were passed, the Consumer Price Index was 72.5% higher than it was in 1960.

12. Since 1952, direct campaign expenditures by national level Presidential and Party Committees for all Presidential nominees in general elections are approximately as follows:

Year	Amounts ($)
1952	11,600,000
1956	12,900,000
1960	19,900,000
1964	24,800,000
1968	44,200,000
1972	83,000,000

13. The following tables describe advertising expenditures in the United States:

No. 1299. Advertising—Estimated Expenditures: 1940 to 1973

[In millions of dollars]

Year	Total	National	Local	Year	Total	National	Local	Year	Total	National	Local
1940	2,088	1,163	925	1962	12,381	7,661	4,720	1968	18,127	10,883	7,244
1945	2,875	1,775	1,099	1963	13,107	8,124	4,983	1969	19,482	11,518	7,964
1950	5,710	3,257	2,453	1964	14,155	8,713	5,442	1970	19,600	11,460	8,140
1955	9,194	5,407	3,788	1965	15,255	9,365	5,890	1971	20,840	11,970	8,870
1960	11,932	7,296	4,636	1966	16,670	10,176	6,494	1972	23,130	12,940	10,190
1961	11,845	7,253	4,592	1967	16,866	10,280	6,616	1973 (prel.)	25,140	13,840	11,300

Source: McCann-Erickson Advertising Agency, Inc., 1940-1966, compiled for Decker Communications, Inc., New York, N.Y. in *Printers' Ink* (copyright); 1967-1969, in *Marketing/Communications* (copyright). Beginning 1970, compiled for Crain Communications, Inc., in *Advertising Age* (copyright).

No. 1300. Advertising—Indexes of National Advertising Expenditures, by Medium: 1950 to 1973

[1967=100. Based on the average monthly expenditure for those major media which give national coverage]

Medium	1950	1955	1960	1965	1968	1969	1970	1971	1972	1973
General index	24	49	67	90	106	115	112	112	125	132
Network television	6	38	56	85	105	115	114	109	124	138
Spot television	3	26	53	90	114	127	125	116	133	140
Magazines	38	56	73	93	103	108	104	110	116	116
Weeklies	40	61	81	94	101	102	95	96	94	90
Women's	46	57	65	95	101	109	107	121	130	128
Monthly	28	43	64	90	110	120	120	129	148	161
Newspapers	61	84	92	93	106	111	105	117	130	131

Source: McCann-Erickson Advertising Agency, Inc., unpublished data.

No. 1307. Active Corporation Expenditures for Advertising, Compared With Receipts, by Industry: 1971

[Compiled from income tax returns; see headnotes and footnotes, table 379]

Industry	Receipts (mil. dol.)	Advertising expenditures: Total (mil. dol.)	Advertising expenditures: Percent of receipts
Total	1,906,068	18,981	1.0
Agriculture, forestry, and fisheries	14,398	42	0.3
Mining	19,480	31	0.2
Construction	97,493	191	0.2
Manufacturing	776,479	9,734	1.3
Food and kindred products, incl. beverages	106,554	2,407	2.3
Tobacco manufactures	8,933	388	4.3
Textile mill products	23,496	147	0.6
Apparel, textile prod.	24,453	168	0.7
Lumber and wood prod., exc. furniture	16,170	58	0.4
Furniture and fixtures	8,093	96	1.2
Paper and allied prod.	23,093	187	0.8
Printing, publishing, and allied industries	27,910	263	0.9
Chem. and allied prod.	63,539	2,323	3.7
Petroleum refining and related industries	91,492	390	0.4
Rubber plastics prod.	17,456	204	1.2
Leather, leather prod.	6,206	92	1.5
Stone, clay, and glass products	18,500	102	0.6
Primary metal indus.	44,471	142	0.3
Fabricated metal prod.[1]	38,898	284	0.7
Machinery, exc. elect.	61,165	476	0.8
Electrical mchy., equip., and supplies	58,247	801	1.4
Transportation equip., exc. motor vehicles	34,782	112	0.3
Motor veh. and equip.	77,144	526	0.7
Scientific instr., photo. equipment[2]	12,852	307	2.4
Other (incl. ordnance)	13,030	261	2.0
Transportation, comm.[3]	149,722	698	0.5
Transportation	67,151	449	0.7
Other	82,571	249	0.3
Wholesale and retail trade	575,730	5,700	1.0
Wholesale trade	258,726	1,109	0.4
Retail trade	313,959	4,565	1.5
Food stores	68,153	686	1.0
General merchandise stores	65,646	1,674	2.6
Apparel and accessory stores	16,138	306	1.9
Auto dealers[4]	80,161	674	0.8
Other	83,861	1,225	1.5
Wholesale and retail trade not allocable	3,044	26	0.9
Finance, insurance, and real estate	198,469	1,579	0.8
Banks and trust cos.	44,579	497	1.1
Insurance carriers	93,751	282	0.3
Real estate	21,557	359	1.7
Other	38,582	441	1.1
Services	73,596	1,053	1.4
Hotels, rooming houses, etc.	6,622	141	2.1
Personal services	6,941	116	1.7
Business services	23,561	284	1.2
Auto., other rep. serv.	7,940	62	0.8
Motion pictures	5,033	170	3.4
Amusement and recreation services[5]	5,251	117	2.2
Other services	18,248	105	0.6
Nature of business not allocable	643	3	0.1

[1] Excludes machinery and transportation equipment. [2] Includes watches and clocks. [3] Comprises transportation, communications, and electric, gas, and sanitary services. [4] Includes gasoline service stations. [5] Excludes motion pictures.

Source: U.S. Internal Revenue Service, *Statistics of Income, 1971, Corporation Income Tax Returns*.

[9]

14. The total amount spent on elections for all offices in 1972 (estimated at $400,000,000) was less than the amount spent in 1972 by the two largest commercial advertisers.

15. Campaign costs as a percent of overall government costs are approximately one-tenth of one percent.

16. Between 1954 and 1968, only 8 percent of incumbent U.S. Representatives and only 15 percent of incumbent U.S. Senators seeking reelection were defeated. 20 percent of the 300 incumbents eligible to run for reelection for the Senate between 1958 and 1974 did not run.

17. The following tables show the reelection rates of incumbent Representatives and Senators:

[10]

Number of Elected Senatorial Incumbents Running for Re-election; Number and Percentage of Winners: 1948-1970

Year	Number of Incumbents Running	Number Who Won	Percentage Who Won
1948	23	15	65.2
1950	25	20	80.0
1952	27	20	74.1
1954	26	22	84.6
1956	29	25	86.2
1958	26	17	65.4
1960	28	27	96.4
1962	30	27	90.0
1964	30	28	93.3
1966	26	25	96.2
1968	24	20	83.3
1970	26	23	88.5
1972	25	20	80.0
1974	25	21	84.0
Totals	370	310	83.8

[11]

Number of Congressional Incumbents Running for Re-election; Number and Percentage of Winners: 1954-1966

Year	Number of House Incumbents	Number Who Won	Percentage Who Won
1948	429	309	72.0
1950	428	362	84.6
1952	428	380	88.8
1954	401	379	94.5
1956	405	389	96.0
1958	391	354	90.5
1960	398	372	93.5
1962	382	368	96.3
1964	389	345	88.7
1966	402	362	90.0
1968	405	396	97.8
1970	390	379	96.9
1972	379	366	96.6
1974	383	343	89.6*
Totals	5,610	5,104	91.0

* In 1974, the figures broken down by Party are as follows:

	Number of House Incumbents	Number Who Won	Percentage Who Won
Democrats	219	215	98.2
Republicans	164	128	78.0

[12]

18. Of House incumbents defeated in 1974, 90% were Republicans.

19. Between 1954 and 1968, incumbents have been involved in 3,220 House and 224 Senate primary or general elections. They have won 92 percent and 85 percent of them, respectively.

20. The following chart reflects those seats which changed hands between the two major parties between 1956 and 1972:

	Change in National Popular Vote Over Last Election	Net Partisan Seat Swing Over Last Election	Incumbent Losses to Opposite Party Challengers		
			D	R	Total
1956	1.5% D	2 D	8	7	15
1958	5.1% D	49 D	1	34	35
1960	1.1% R	20 R	22	3	25
1962	2.2% R	2 R	9	5	14
1964	4.7% D	36 D	5	39	44
1966	6.2% R	47 R	39	1	40
1968	0.4% R	5 R	5	0	5
1970	3.3% D	12 D	2	9	11
1972	1.4% R	12 R	6	3	9

[13]

21. The percentage of adults who could name their Congressman rose from 46 to 53 percent between 1966 and 1970.

22. Since World War II, the importance of party in election results has declined, while the importance of incumbency has increased.

23. The following table shows:

[14]

Incumbent and Nonincumbent House Nominees and the Winning Presidential Tide: The Fate of Congressional Candidates of the Party that Lost the Presidency, 1924-1964

WINNING PRESIDENTIAL CANDIDATE'S PERCENTAGE	NUMBER OF DISTRICTS[a]	HOUSE CANDIDATES OF THE PARTY THAT LOST THE PRESIDENCY: NUMBER OF INCUMBENTS WHO: Ran	Won	NUMBER OF NONINCUMBENTS WHO: Ran	Won	PERCENTAGE OF INCUMBENTS AND NONINCUMBENTS WHO WON: Incs.	Nonincs.
0-4.9	20	10	10	5[b]	1[b]	100.0	20.0
5-29.9	139	113	113	19[c]	18[c]	100.0	94.7
30-34.9	61	52	52	7	6	100.0	85.7
35-39.9	193	153	153	33	29	100.0	87.9
40-44.9	285	213	209	59	38	98.1	64.4

45-47.4	186	132	130	48	20	98.5	41.7
47.5-49.9	238	144	132	87	29	91.7	33.8
50-52.4	251	145	120	99	21	82.2	21.2
52.5-54.9	265	129	85	122	12	65.9	9.8
55-59.9	600	247	160	316	18	64.8	5.7
60-64.9	521	122	69	360	9	56.6	2.5
65-69.9	345	52	28	267	5	53.8	1.9
70-94.9	700	27	21	460	2	77.8	0.4
95-100	49	–	–	28	0	–	0.0
Total	3853	1540	1282	1910	208		

[a] Districts for which no presidential figures are available are excluded from this table. Since some House seats are uncontested, the number of districts analyzed may exceed the total number of incumbent House nominees run by the party losing a presidential election.

[b] Four of the five districts covered in these units were in Alabama in 1948, where President Truman, the regular Democratic party presidential nominee, was excluded from the ballot but where no Republican House candidates were elected.

[c] In 1964, Robert E. French, a nonincumbent Republican House candidate, lost to Democratic Representative Armistead I. Selden, Jr., in Alabama's 5th District.

[15]

24. Incumbent officeholders have numerous resources at their disposal which are made available at the government's expense. Such resources for Senators and Representatives include:

a. $409,440 per term for salaries for a staff of up to 18 employees for Representatives, and a variable allowance for Senators, the highest of which is $1,503,960 per term.

b. $2,000 per term for four student interns.

c. a three-room rent-free suite of offices in Washington, and "no more than three district offices outfitted with office equipment, carpeting, and draperies at the expense of the General Services Administration," the value of which per term has been estimated at $18,000.

d. $13,000 per term ($6,500 per regular session) for Representatives and $10,000 per term ($5,000 per regular session) for Senators to cover the cost of stationery and office supplies.

e. $4,000 for office expenses per term in the home district.

f. 37 round-trips each term for Representatives and up to 45 such trips for Senators; 6 round-trips for staff travel to the State or District.

g. $2,280 per term ($1,140 per year) for Representatives and $3,480 per term ($1,740 per year) for Senators for air mail and/or special delivery postage stamps.

h. Telephone service (installation of six lines and one recorder coupler) valued at $3,536 per term; use of the Federal Telecommunications System (unlimited calls weekdays after office hours and on weekends, and 100,000 message units per regular session (one minute of a long distance call equals four units; one word of a telegram equals two units; one word of a night letter equals one unit), all valued at $5,160 per term; District phone

[16]

allowance valued at $4,200 per term ($600 per quarter).

i. $5,500 per term for the purchase of electric and mechanical office equipment, and an allowance of $15,600

per term ($650 per month) for the rental of office equipment; furnishings for the Washington offices, maintenance and repair are provided free – and valued at $15,000 per term.

j. Congressional research assistants are available at the Library of Congress for work on speeches, to answer inquiries from constituents, and for other matters.

k. 480,000 heavy-duty brown envelopes, valued at $6,000 and labeled "Public Document – Official Business" per year; (960,000 envelopes per term valued at $12,000).

l. free and unlimited use of the frank for first-class mail relating to the "conduct of official business, activities and duties of" Congress. The value of the franking privilege is estimated at about $100,000 per term.

m. a publication allowance, including 68 complimentary subscriptions to the Congressional Record, plus three for personal use. The value of these is $3,195.

n. other publications, useful both to the Member's office and to constituents, including 3,000 wall calendars per term, thirty-three copies of the Congressional Directory, a set of the United States Code, five subscriptions to the Federal Register, and thousands of copies of several pamphlets: "How Our Laws Are Made" (2,000 copies per term), "Our American Government" (2,500 copies per term), "Our Flag" (200 per term), debate topic books (200 per term), "Capital: Symbol of Freedom" (1,000 per term), and reprints of the Constitution in large, small, and pocket sizes.

o. publications from Federal agencies; Agriculture Yearbooks (800 per term); Agriculture Bulletins (20,000 per term); maps (10,000 per term) from the Geological Survey;

materials from the Department of Health, Education and Welfare such as "Your Child 1-6" (6,000 per term), "Infant Care" (6,000 per term), drug

abuse pamphlets (20,000 per term), and publications from the Children's Bureau (50 per month of each).

p. use of the radio and television recording studio, and the services of "folding room" personnel.

q. free underground parking on Capitol Hill.

r. free emergency medical care from physicians and nurses at the Capitol Hill medical center (which contains an examination room and a laboratory).

s. free drugs if prescribed by Capitol Hill physicians.

t. government-subsidized health insurance plans.

u. a $45,000 life insurance policy at special rates plus benefits for the surviving spouse.

v. free swimming pools and gym (one for each Chamber).

w. free steam rooms, masseurs, and physiotherapy.

x. free haircuts for Senators; haircuts at $2 for House members at special barber shops (beauty shops at reduced rates for female members).

y. free plants and flowers.

z. reduced-rate meals (free of sales taxes) at private dining rooms in the Capitol.

aa. a salary of $42,500 per year.

bb. liberal retirement benefits after five years of service (maximum of $34,000 a year after 32 years service).

cc. the use of the computer for the maintenance of mailing lists and the selection of names for specialized mailings.

25. Resources available to incumbent Presidents are as follows:

[18]

a. free residence (The White House) and all facilities appurtenant thereto;

b. free offices (The White House and the Executive Office Building);

c. use of penalty mail;

d. use of the Army Special Corps for any communications needs;

e. use of the Secret Service;

f. use of military transportation (sixteen airplanes and sixteen helicopters) as Commander-In-Chief, and use of Air Force One for all but avowedly explicit political trips;

g. an extensive staff (the total size of which is between 500 and 600) in the Executive Office of the President, including those performing executive functions and also

(a) speechwriters;
(b) photographers; and
(c) researchers.

h. a staff of approximately one hundred domestic servants, gardeners, and maintenance workers;

i. free medical care;

j. use of the Presidential yacht;

k. free access to the Library of Congress' research services for help on speeches, answering inquiries from citizens, and other matters;

l. similar use, when desired, of employees of the Federal Government from the various departments and agencies;

m. a salary of $200,000 per year; and

n. an expense account of $50,000.

26. In the last five years, the number of House

[19]

and Senate employees has grown from approximately 10,000 to approximately 17,000.

27. Many incumbent Senators and Representatives have the use of the staff assigned to the committees on which they serve. The use of such staff personnel includes the time and resources expended by those individuals to acquaint incumbents with the issues before the committees, the subject of proposed or scheduled hearings, the import of legislation being considered, and the progress of such legislation through the committee.

28. The use of such staff personnel may include time and effort for matters which may be unrelated, or only partially related, to Committee affairs.

29. Some incumbent Senators and Representatives are able to schedule hearings of such Committees, or of certain of the Subcommittees thereof, in their home districts or States.

30. The longer an incumbent remains in Congress, the more choice he is likely to have to serve on Committees dealing with subject matters of interest to him, his district or his State.

[20]

31. Incumbent officeholders enjoy:

a. name recognition in the incumbent's district or State;

b. the ability to make news while acting in an official capacity, such as announcing grant-in-aid programs for their district or State;

c. the ability to respond to inquiries and requests from constituents, answering questions and assisting constituents as part of their duties ("casework");

d. being asked to perform ceremonial functions (e.g., participation in parades or dedication ceremonies) in the incumbent's district or State because of the office held; and

e. giving assistance to constituent visitors to Washington, seats in the Congressional galleries, and similar matters.

32. Incumbent Presidents enjoy:

a. name recognition across the country;

b. the ability to make news while acting in an official capacity;

c. the ability to obtain massive TV and radio coverage

of a Presidential speech on short notice;

d. wide discretion to affect national policy;

e. wide discretion to travel around the country for speeches, ceremonial functions, and fact-finding trips;

f. the ability to confer honorary awards, to appoint officers of the United States, ambassadors, and members of the judiciary;

g. discretion in the allocation of the resources available in the Federal budget; and

h. the ability to direct the Executive Branch of Government, and specifically the ability to determine

[21]

policy for Cabinet level officers, including the Secretary of the Treasury and the Attorney General.

33. Incumbent officeholders often desire and are concerned about their own reelection.

34. The peak mailing periods for use of franked mail are just prior to the dates of primary and general elections.

35. The flow of franked mail more than sextupled over the sixteen-year period from 1954 to 1970.

36. In 1973, Congress spent approximately $23,000,000 in exercising the franking privilege. The budgeted cost for 1974 was approximately $38,000,000, an average cost of $70,000 per Member of Congress.

37. Incumbents have their years in office and access to

the frank to develop their mailing list. They may also get in the habit of dealing with their electorate through the mail. Consequently, during their campaigns they can easily and comfortably use their mailing lists to make the contacts they want to make.

[22]

38. In 1972, out of the thirty-three Senate races, voters in seventeen states chose Senators from a party other than the party that carried their state on the Presidential level. In sixteen of those states, Democratic Senators were elected as the Republican Presidential nominee carried the state; in one a Republican Senator was elected as the Democratic Presidential nominee carried the state.

39. In 1972, out of eighteen gubernatorial races, voters in eleven states chose Governors from a party other than the party that carried their State on the Presidential level. All eleven were Democratic candidates elected as the Republican Presidential nominee carried their States.

40. In 1974, out of twenty-five states electing both Senators and Governors, voters in eleven states split their tickets to elect members of different parties for these two offices. If the Democratic candidate for the Senate from New Hampshire is declared the winner, the figure will be twelve states.

[23]

41. In his 1968 Massachusetts Presidential primary campaign, Eugene McCarthy took in as total receipts $743,879. His total expenditures in that campaign were $773,985 (both figures through November 30, 1968.)

42. Campaign officials of George Wallace's-968 Presidential campaign estimated that the organizational and legal efforts to get Wallace on the ballot in 50 states cost $3,000,000.

43. The average cost per vote Eugene McCarthry received in his 1968 New Hampshire Presidential primary campaign was $12.

44. In the New Hampshire primary in 1968, Eugene McCarthy was running against an incumbent President and was relatively unknown as compared to President Johnson. In the final voting, President Johnson won by just under 4000 votes (7.2 percent).

45. The proportions of Republican and Democratic income to national-level committees derived from individual contributions in sums of $500 or more in the last six Presidential election years follows:

[24]

	Democratic	Republican
1948	69%	74%
1952	63	68
1956	44	74
1960	59	58
1964	69	28
1968	61	47

46. The cost of contacting voters through TV advertising can differ from election district to election district because many TV signals do not correspond to the boundaries of those districts.

47. The voting age population of the nineteen smallest

states is less than the voting age population of New York.

48. The voting age population of the twenty smallest states is less than the voting age population of California.

49. New York and California have twice as many voters as the 20 smallest states combined.

50. New York and California together have more electoral votes than the 20 smallest states combined.

51. The electoral votes of the 11 largest states

[25]

are a majority of the electoral college.

52. The electoral votes of the 20 smallest states do not constitute a majority of the electoral college.

53. The cost of communicating with voters by various media differs among campaigns as well as among election districts.

54. The spending index for political campaigns in the following countries is reflected below:

Country	Year	Spending Index*
Australia	1958	0.27
Britain	1959	0.83
United States	1960	1.12
Germany	1961	1.40
Japan	1960	1.40
Italy	1958-1960	4.50
Philippines	1961	18.90
Israel	1960	21.20

*Spending Index = Spending per adult divided by average hourly wage of industrial workers.

[26]

55. The following are variables which affect the costs of political campaigns:

1. Physical
    a. Total square miles of district
    b. Topography
    c. Region of Country
    d. Media outlets – Number, Location and Advertising Charges
        i. Radio
        ii. Television
        iii. Daily newspapers
        iv. Organizational publications
        v. Other
    e. Availability and kind of transportation facilities
2. Social
    a. Population size
        i. Urban
        ii. Suburban

[27]

        iii. Rural
    b. Age distribution of population
    c. Income distribution of population
    d. Occupation distribution of population
    e. Major industries
    f. Ethnic distribution of population

3. Political

a. Voting behavior

i. Turnout

ii. Party division

iii. Ticket-splitting

b. Opposition

c. Other

i. Issues

ii. Other races

iii. Organizations

4. Legal

a. Election laws

i. Nomination

ii. Ballot

iii. Registration

iv. Filing

b. Campaign laws

i. Finance

1) Collection

2) Expenditure

ii. Non-finance

5. East of Obtaining Information about the Above and Keeping it Current

The above variables may differ widely from election district to election district.

56. A Gallup Poll shows that as many as 54 percent of the respondents have split their tickets.

57. Between November, 1973, when Intervening Defendant John Gardner said that at least $90,000 was needed to run an effective House campaign, and the time of the passage of the FECA Amendments, the Consumer Price Index rose 11.2%. To spend an amount of money in October, 1974 equivalent to the $90,000 figure in November, 1973, would require spending $100,800.

58. Fundraising practices and results may be

different under a system which limits contributions to $1,000 and under.

59. The following are the first-class mail postal rates since World War II:

First-Class Mail
Postal Rate History

	Letters			Postal Cards
	Nonlocal	Local[1]		
Effective date		A	B	
	per ounce			each
March 26, 1944	3¢	3¢	1¢	1¢
January 1, 1952	3¢	3¢	2¢	2¢
August 1, 1958	4¢	4¢	3¢	3¢
January 7, 1963	5¢	5¢	4¢	4¢
January 7, 1968	6¢[2]	6¢[2]	6¢[2]	5¢
May 16, 1971	8¢[3]	8¢[3]	8¢[3]	6¢
March 2, 1974	10¢[3]	10¢[3]	10¢[3]	8¢

[1] Letters addressed for delivery at the office where mailed:
A. At letter carrier offices.
B. At non-letter carrier offices. Rate discontinued January 7, 196_.

[2] Applicable to pieces weighing 13 ounces or less. Priority mail rates apply to heavier pieces.

[3] Applicable to pieces weighing 12 ounces or less. Priority mail rates apply to heavier pieces.

[30]

60. The Washington Post Company, in addition to owning and publishing the daily and Sunday editions of the Washington Post, also owns the following subsidiaries: Newsweek, Inc.; Post-Newsweek Stations, Inc.; Post-Newsweek Stations, Capital Area, Inc.; Post-Newsweek Stations, Fla., Inc.; and Post-Newsweek Stations, Connecticut, Inc. The Company operates four television stations and radio broadcasting stations in Washington, D.C., and Cincinnati, Ohio. The net income for the Company in the years 1971-1973 was as follows:

1973	$13,334,000
1972	$ 9,732,000
1971	$11,757,000

Total assets for the period 1971-1973 were as follows:

1973	$184,704,000
1972	$161,031,000
1971	$145,692,000.

The totals of capital surplus and retained earnings for the years 1971-1973 were as follows:

1973	$90,497,000
1972	$78,984,000
1971	$70,131,000.

61. The New York Times Company owns and publishes, either directly or through subsidiaries, the daily and Sunday editions of the New York Times, ten newspapers in Florida, and one newspaper in North

[31]

Carolina. It also operates an AM-FM radio station and one television station. The annual average circulation of the New York Times in 1973 was 866,000 on weekdays, and 1,465,000 on Sundays. Total advertising lineage in the New York Times for 1973 was valued at $79,661,000. Net income

for the Company in the years 1971-1973 was as follows:

1973	$17,610,000
1972	$13,602,000
1971	$ 9,452,000.

Total assets for the period 1971-1973 were as follows:

1973	$197,936,000
1972	$180,545,000
1971	$168,006,000.

The totals of capital surplus and retained earnings for the years 1971-1973 were as follows:

1973	$120,419,000
1972	$111,941,000
1971	$109,220,000.

62. The Manchester Union Leader is engaged in the business of publishing and printing newspapers. In 1973 the company's total sales were $6 million dollars.

63. Media General, Inc., a holding company, owns and publishes, either directly or through subsidiaries, the daily and Sunday editions of the *Chicago Tribune* as well as at least two other newspapers in each of the following states: Virginia, Florida, and North Carolina.

[32]

In addition, Media General owns and operates a television station as well as AM-FM radio stations in Florida and a cable television system in Virginia. The company also produces and markets newsprint paper and publishes various periodicals, tabloids, and other materials.

64. The average net paid circulation for the Media company's newspapers in 1973 was 579,351 on weekdays and 497,760 on Sundays. Total advertising lineage in 1973 was $196,821,000. Net income for the Company in the

years 1972-1973 was as follows:

1973	$8,676,000
1972	$7,981,000

Total assets for the period 1972-1973 were as follows:

1973	$134,577,000
1972	$127,873,000

The totals of capital surplus and retained earnings for the years 1972-1973 were as follows:

1973	$62,815,000
1972	$55,913,000

65. Effective January 1, 1975, one full page of advertising space billed at the open general advertising rate (with no guarantee of where in the paper the advertisement will be printed) in the Washington Post costs:

[33]

$6,971.04	Daily Edition.
$7,712.64	Sunday Edition.

66. Several American newspapers had their origins as personal, political organs.

67. In the 1972 U.S. Senate campaigns, a campaign's percentage of money from small contributions was closely correlated with its spending for direct mail.

68. Many campaigns for the U.S. Senate in 1972 solicited volunteer or paid legal and accounting help to file disclosure reports.

69. The average contribution to the Intervening Defendant Center for Public Financing of Elections was almost $3,000 in 1973 (23 contributors gave $68,754).

70. The six members of the Federal Election Commis-

sion (hereinafter FEC) are as follows:

a. Thomas E. Harris. From 1948 to 1955, Mr. Harris was the Associate General Counsel of the Congress of Industrial Organizations. From 1955 until his appointment to the FEC, he was Associate General Counsel of the American Federation of Labor and the Congress of Indus-

[34]

trial Organizations. Mr. Harris' name was submitted for nomination by Senate Majority Leader Mansfield, on the withdrawal of Mr. Joseph Meglen, a former campaign treasurer for the Majority Leader.

b. Joan D. Aikens. Mrs. Aikens has been active in Republican Party affairs on the local, state, and national levels for fifteen years. At the time her name was submitted by Senate Minority Leader Scott, she was President of the Pennsylvania Council of Republican Women.

c. Neil O. Staebler. Mr. Staebler has been active in Democratic Party politics at least since 1948. He served one term in the House of Representatives (1963-65), and was the unsuccessful 1964 Democratic candidate for Governor of Michigan. He was appointed by President Ford. At the time of his appointment, he was a member of Intervening Defendant Common Cause.

d. Thomas B. Curtis. Mr. Curtis has been active in Republican Party politics at least since 1950. He was a Representative from Missouri from 1951 to 1969, and was the unsuccessful Republican Senatorial candidate in 1974. He was appointed by President Ford.

[35]

e. Robert O. Tiernan. Mr. Tiernan was a Democratic Representative from Rhode Island from 1967 to 1975. His name was submitted by House Majority Leader O'Neill.

f. Vernon W. Thomson. Mr. Thomson has been ac-

tive in Republican Party politics at least since 1939. He was Governor of Wisconsin in 1957-58, and served as a Member of the House of Representatives from 1961 to 1975. His name was submitted by House Minority Leader Rhodes.

71. Two members of the FEC were appointed by the President of the United States, two by the President Pro Tempore of the United States Senate, and two by the Speaker of the House of Representatives. The latter four nominations were made on the recommendations of the Majority and Minority Leaders of the respective Houses of the Congress.

72. A minority of taxpayers has designated the check-off in any tax period.

73. As of December 31, 1974, $30,203,527 had been checked-off by taxpayers into the Presidential Election Campaign Fund. As of March 12, 1975 an additional

[36]

$10,226,000 was credited from the returns of 2,974,000 citizens who designated the $1.00 check-off and 3,226,000 married couples who designated the $2.00 check-off for joint returns. As of March 12, 1975, 28,221,000 returns of an estimated 83,000,000 returns had been filed by 1975 taxpayers.

74. The Internal Revenue Service estimates that at the rate of designation by taxpayers filing their 1974 returns through March 12, 1975, a total of $60,000,000 will be available as of December 31, 1975, and $90,000,000 as of April 15, 1976 for the 1976 Presidential elections, not counting any payments out of the fund.

75. Nomination by a national convention of a political party is neither a constitutional nor a legal requirement for an individual to be a candidate for election as President

of the United States. Not all candidates for President of the United States are nominated by a national nominating convention.

76. Some national nominating conventions have far fewer major or controversial issues to resolve than others.

[37]

77. Some national conventions are more costly than others.

78. Public funding of national nominating conventions does not relieve individual candidates for federal offices of reliance on private financing.

79. Some Members of Congress have more power over legislation providing public financing than others.

80. Incumbent Presidents eligible for reelection often desire to be reelected.

81. A potential applicant for matching grants – is an incumbent President running for reelection in 1976.

82. Potential applicants for matching grants are candidates running against an incumbent President in party primaries.

83. On January 1, 1968, Hubert Humphrey was not a candidate for President of the United States.

84. Hubert Humphrey was nominated by the Democratic Party for President of the United States in 1968.

[38]

85. The following are the results of various elections for the offices of President, Senator, and Representative for different years:

Key to party designations:

F	Federalist	CU	Constitutional Union
D	Democratic	G	Greenback
NR	National Republican	P	Prohibition
AM	Anti-Masonic	PO	Populist
W	Whig	S	Socialist
L	Liberty	PR	Progressive
FS	Free Soil	U	Union
R	Republican	SR	States' Rights
LR	Land Reform	AIP	American Independent Party

Party designations pose special problems in the early years, when national political parties in the sense understood in modern times were still emerging. The designation (D) for Democrat is used in this chart for the factions called Anti-Federalist, later Republican and eventually known as Democratic by the 1820s.

Starred Presidents died in office and were succeeded by their Vice Presidents.

Year	Candidates	Popular Vote Total	Popular Vote Percentage	Electoral Votes Received
1789	George Washington (F)	Not Available		69
	John Adams (F)	"	"	34
	John Jay (F)	"	"	9
	Others	"	"	26
1792	George Washington (F)	"	"	26
	John Adams (F)	"	"	132
	George Clinton (D)	"	"	50
	Others	"	"	5
1796	John Adams (F)	"	"	71
	Thomas Jefferson (D)	Not Available		68

Year	Candidates	Popular Vote Total	Popular Vote Percentage	Electoral Votes Received
	Thomas Pinckney (F)	"	"	59
	Aaron Burr (D)	"	"	30
	Samuel Adams (F)	"	"	15
	Oliver Ellsworth (F)	"	"	11
	Others	"	"	22
1800	Thomas Jefferson (D)	"	"	73
	Aaron Burr (D)	"	"	73
	John Adams (F)	"	"	65
	Charles C. Pinckney (F)	"	"	64
	John Jay	"	"	1

1848	*Zachary Taylor (W)	1,362,101	47.3	163
	Lewis Cass (D)	1,222,674	42.5	127
	Martin Van Buren (FS)	291,616	10.1	–
	Gerrit Smith (L)	2,733	0.1	–
1852	Franklin Pierce (D)	1,609,038	50.9	254
	Winfield Scott (W)	1,386,629	43.8	42
	John P. Hale (FS)	156,297	4.9	–
	Others	12,445	0.4	–
1856	James Buchanan (D)	1,839,237	45.6	174
	John C. Fremont (R)	1,341,028	33.35	114
	Millard Fillmore (W)	849,872	21.1	8
	Gerrit Smith (LR)	484	–	–
1860	Abraham Lincoln (R)	1,867,198	39.8	180
	Stephen A. Douglas (D)	1,379,434	29.4	12
	John C. Breckinridge (D)	854,248	18.2	72
	John Bell (CU)	591,658	12.6	39
	Gerrit Smith	172	–	–
1864	*Abraham Lincoln (R)	2,219,362	55.2	212
	George B. McCellan (D)	1,805,063	44.9	21

Year	Candidates	Popular Vote Total	Percentage	Electoral Votes Received
1868	Ulysses S. Grant (R)	3,013,313	52.7	214
	Horatio Seymour (D)	2,703,933	47.3	80
1872	Ulysses S. Grant (R)	3,597,375	55.6	286
	#Horace Greeley (D)	2,833,711	43.8	–
	Others	35,052	0.6	63
1876	Rutherford B. Hayes (R)	4,035,924	47.9	185
	Samuel J. Tilden (D)	4,287,670	50.9	184
	Others	94,935	1.1	–
1880	*James A. Garfield (R)	4,454,433	48.3	214
	Winfield S. Hancock (D)	4,444,976	48.2	155
	James B. Weaver (G)	308,649	3.4	–
	Others	11,409	0.1	–

Horace Greeley died Nov. 29, 1872, before the counting of the electoral votes, which the Democratic electors divided among a scattering of candidates.

1804	Thomas Jefferson (D)	"	"	162
	Charles C. Pinckney (F)	"	"	14
1808	James Madison (D)	"	"	122
	Charles C. Pinckney (F)	"	"	47
	George Clinton (F)	"	"	6
1812	James Madison (D)	"	"	128
	DeWitt Clinton (F)	"	"	89
1816	James Monroe(D)	"	"	183
	Rufus King (F)	"	"	34
1820	James Monroe (D)	"	"	231
	John Quincy Adams (D)	"	"	1

Year	Candidates	Popular Vote Total	Percentage	Electoral Votes Received
1824	John Quincy Adams (D)	115,696	31.9	84
	Andrew Jackson (D)	152,933	42.2	99
	William H. Crawford (D)	46,979	13.0	41
	Henry Clay (D)	47,136	13.0	37
1828	Andrew Jackson (D)	647,292	56.0	178
	John Quincy Adams (NR)	507,730	44.0	83
1832	Andrew Jackson (D)	688,242	54.5	219
	Henry Clay (NR)	473,462	37.5	49
	William Wirt (AM)	101,051	8.0	7
	John Floyd (D)	–	–	11
1836	Martin Van Buren (D)	764,198	50.9	170
	William H. Harrison (W)	549,508	36.6	73
	Hugh L. White (W)	145,352	9.7	26
	Daniel Webster (W)	41,287	2.8	14
	Willie P. Mangum (D)	–	–	11
1840	*William H. Harrison (W)	1,275,612	52.9	234
	Martin Van Buren (D)	1,130,033	46.8	60
	James G. Birney (L)	7,053	0.3	–
1844	James K. Polk (D)	1,339,368	49.6	170
	Henry Clay (W)	1,300,687	48.1	105
	James G. Birney (L)	62,197	2.3	–

1884	Grover Cleveland (D)	4,875,971	48.5	219
	James G. Blaine (R)	4,852,234	48.3	182
	Benjamin F. Butler (G)	175,066	1.7	–
	John P. St. John (P)	150,957	1.5	–
1888	Benjamin Harrison (R)	5,445,269	47.8	233
	Grover Cleveland (D)	5,540,363	48.6	168
	Clinton B. Fish (P)	250,122	2.2	–
	Others	154,083	1.4	–

Year	Candidates	Popular Vote Total	Percentage	Electoral Votes Received
1892	Grover Cleveland (D)	5,556,982	46.0	277
	Benjamin Harrison (R)	5,191,466	43.0	145
	James B. Weaver (PO)	1,029,960	8.5	22
	Others	292,672	2.4	–
1896	William McKinley (R)	7,113,734	51.0	271
	William J. Bryan (D)	6,516,722	46.7	176
	Others	317,219	2.3	–
1900	*William McKinley (R)	7,219,828	51.7	292
	William J. Bryan (D)	6,358,160	45.5	155
	Others	396,200	2.8	–
1904	Theodore Roosevelt (R)	7,628,831	56.4	336
	Alton B. Parker (D)	5,084,533	37.6	140
	Eugene V. Debs (S)	402,714	3.0	–
	Silas C. Swallow (P)	259,163	1.9	–
	Others	149,357	1.1	–
1908	William H. Taft (R)	7,679,114	51.6	321
	William J. Bryan (D)	6,410,665	43.1	162
	Eugene V. Debs (S)	420,858	2.8	–
	Eugene W. Chafin (P)	252,704	1.7	–
	Others	127,379	0.9	–
1912	Woodrow Wilson (D)	6,301,254	41.9	435
	Theodore Roosevelt (PR)	4,127,788	27.4	88
	William H. Taft (R)	3,485,831	23.2	8
	Eugene V. Debs (S)	901,255	6.0	–
	Others	238,934	1.6	–

1916	Woodrow Wilson (D)	9,131,511	49.3	277
	Charles E. Hughes (R)	8,548,935	46.1	254
	Allan L. Benson (S)	585,974	3.2	–
	Others	269,812	1.5	–

Year	Candidates	Popular Vote Total	Percentage	Electoral Votes Received
1920	*Warren G. Harding (R)	16,153,115	60.3	404
	James M. Cox (D)	9,133,092	34.1	127
	Eugene V. Debs (S)	915,490	3.4	–
	Others	566,916	2.1	–
1924	Calvin Coolidge (R)	15,719,921	54.0	382
	John W. Davis (D)	8,386,704	28.8	136
	Robert M. LaFollette (PR)	4,832,532	16.6	13
	Others	155,866	0.5	–
1928	Herbert C. Hoover (R)	21,437,277	58.2	444
	Alfred E. Smith (D)	15,007,698	40.8	87
	Others	360,976	1.0	–
1932	Franklin D. Roosevelt (D)	22,829,501	57.4	472
	Herbert C. Hoover (R)	15,760,684	39.6	59
	Norman M. Thomas (S)	884,649	2.2	–
	Others	283,925	0.8	–
1936	Franklin D. Roosevelt (D)	27,757,333	60.8	523
	Alfred M. Landon (R)	16,684,231	36.5	8
	William Lemke (U)	892,267	2.0	–
	Others	320,932	0.7	–
1940	Franklin D. Roosevelt (D)	27,313,041	54.7	449
	Wendell Willkie (R)	22,348,480	44.8	82
	Others	238,897	0.5	–
1944	*Franklin D. Roosevelt (D)	25,612,610	53.4	432
	Thomas E. Dewey (R)	22,017,617	45.9	99
	Others	346,443	0.7	–
1948	Harry S. Truman (D)	24,179,345	49.6	303
	Thomas E. Dewey (R)	21,991,291	45.1	189
	J. Strom Thurmond (SR)	1,176,125	2.4	39
	Henry A. Wallace (PR)	1,157,326	2.4	–

Year	Candidates	Popular Vote Total	Percentage	Electoral Votes Received
	Others	289,739	0.6	–

1952	Dwight D. Eisenhower (R)	33,936,234	55.1	442
	Adlai E. Stevenson (D)	27,314,992	44.4	89
	Others	299,692	0.5	–
1956	Dwight D. Eisenhower (R)	35,590,472	57.4	457
	Adlai E. Stevenson (D)	26,022,752	42.0	73
	Unpledged Elector Slates	196,318	0.3	–
	Others	217,366	0.3	1
1960	*John F. Kennedy (D)	34,220,984	49.5	303
	Richard M. Nixon (R)	34,108,157	49.3	219
	Unpledged Elector Slates	638,822	0.9	15
	Others	188,559	0.3	–

ALTERNATE COMPUTATION: This method avoids a major defect of the method used above, which counted Alabama Democratic votes twice, once for Kennedy and once for unpledged slates. The alternate computation credits 5/11ths of Alabama's Democratic votes to Kennedy and 6/11ths to the unpledged electoral state totals.

John F. Kennedy (D)	34,049,976	49.2	303
Richard M. Nixon (R)	34,108,157	49.3	219
Unpledged Elector Slates	491,527	0.7	15
Others	188,559	0.3	–
1964 Lyndon B. Johnson (D)	43,129,484	61.1	486
Barry M. Goldwater (R)	27,178,188	38.5	52
Others	336,838	0.4	–
1968 Richard M. Nixon (R)	31,770,237	43.4	301
Hubert H. Humphrey (D)	31,270,533[1]	42.7	191
George C. Wallace (AIP)	9,906,141	13.5	46
Others	239,908	.4	–

[1] Includes 141,124 under listing of Alabama Independent Democrats under listing of National Democratic party of Alabama.

No. 680. Vote Cast for President, 1900 to 1972, and for Representatives, 1932 to 1972, by Political Parties

[Prior to 1956, excludes Alaska and Hawaii. Vote cast for major party candidates includes the votes of minor parties cast for those same candidates. See also *Historical Statistics, Colonial Times to 1957*, series Y 27-31 and Y 146-149]

Year	Candidates for President: Democratic	Candidates for President: Republican	Vote cast for President: Total popular vote [1]	Democratic: Popular vote: Number	Democratic: Popular vote: Percent	Democratic: Electoral vote	Republican: Popular vote: Number	Republican: Popular vote: Percent	Republican: Electoral vote
			1,000	*1,000*			*1,000*		
1900	Bryan	McKinley	13,968	6,357	45.5	155	7,218	51.7	292
1904	Parker	T. Roosevelt	13,521	5,084	37.6	140	7,628	56.4	336
1908	Bryan	Taft	14,884	6,412	43.1	162	7,675	51.6	321
1912	Wilson	Taft	15,037	6,297	41.9	435	3,487	23.2	8
1916	Wilson	Hughes	18,531	9,128	49.3	277	8,534	46.1	254
1920	Cox	Harding	26,748	9,130	34.1	127	16,143	60.4	404
1924	Davis	Coolidge	29,086	8,385	28.8	136	15,718	54.0	382
1928	Smith	Hoover	36,812	15,016	40.8	87	21,392	58.1	444
1932	F. D. Roosevelt	Hoover	39,732	22,810	57.4	472	15,759	39.7	59
1936	F. D. Roosevelt	Landon	45,643	27,753	60.8	523	16,675	36.5	8
1940	F. D. Roosevelt	Willkie	49,900	27,313	54.7	449	22,348	44.8	82
1944	F. D. Roosevelt	Dewey	47,977	25,613	53.4	432	22,018	45.9	99
1948	Truman	Dewey	48,794	24,179	49.6	303	21,991	45.1	189
1952	Stevenson	Eisenhower	61,551	27,315	44.4	89	33,936	55.1	442
1956	Stevenson	Eisenhower	62,027	26,023	42.0	73	35,590	57.4	457
1960	Kennedy	Nixon	68,838	34,227	49.7	303	34,108	49.6	219
1964 [2]	Johnson	Goldwater	70,645	43,130	61.1	486	27,178	38.5	52
1968 [3]	Humphrey	Nixon	73,212	31,275	42.7	191	31,785	43.4	301
1972 [3]	McGovern	Nixon	77,719	29,170	37.5	17	47,170	60.7	520

Year	Vote cast for President—Con.: Socialist and Soc. Labor	Misc. independent [4]	Prohibition	Communist	Year	Vote cast for Representatives [5]: Total [6]	Democratic: Number	Democratic: Percent	Republican: Number	Republican: Percent
	1,000	*1,000*	*1,000*	*1,000*		*1,000*	*1,000*		*1,000*	
1900	128	86	209	–	1932	37,657	20,540	54.5	15,675	41.6
1904	434	117	259	–	1934	32,236	17,385	53.9	13,558	42.0
1908	435	108	254	–	1936	42,886	23,944	55.8	17,003	39.6
1912	929	4,119	206	–	1938	36,236	17,612	48.6	17,047	47.0
1916	590	49	221	–	1940	46,951	24,092	51.3	21,393	45.6
1920	952	334	189	–	1942	28,074	12,934	46.1	14,203	50.6
1924	36	4,853	58	36	1944	45,103	22,808	50.6	21,303	47.3
1928	299	74	20	21	1946	34,398	15,221	44.2	18,400	53.5
1932	918	53	82	103	1948	45,933	23,820	51.9	20,920	45.5
1936	200	897	38	80	1950	40,342	19,785	49.0	19,750	49.0
1940	131	3	89	46	1952	57,571	28,605	49.7	28,431	49.4
1944	124	147	75	–	1954	42,580	22,347	52.5	20,034	47.0
1948	199	2,381	104	–	1956	58,426	29,850	51.1	28,449	48.7
1952	50	176	73	–	1958 [10]	45,818	25,733	56.2	19,894	43.4
1956	44	325	42	–	1960	64,133	35,111	54.7	28,759	44.8
1960	48	410	46	–	1962	51,261	26,906	52.5	24,210	47.2
1964 [3]	45	208	23	–	1964	65,886	37,700	57.2	27,866	42.3
1968 [3]	53	10,082 [7]	15	1	1966	52,900	26,917	50.9	25,525	48.3
1972 [3]	120	1,219	14	26	1968	66,109	33,045	50.0	31,850	48.2
					1970	54,173	28,923	53.4	24,415	45.1
					1972	71,188	36,780	51.7	33,064	46.4

– Represents zero. [1] Includes votes for minor party candidates, independents, unpledged electors, and scattered write-in votes. [2] Includes District of Columbia.
[3] Mainly Progressive in 1912 and 1924, States Rights and Progressive in 1948, and American Independent in 1968 and 1972. [4] Socialist Labor only.
[5] Includes 4,831,000 votes cast for La Follette, candidate for the Progressive Party.
[6] Workers Party. [7] Includes 9,906,000 votes cast for George Wallace, American Independent Party.
[8] See also table 689. [9] Includes minor party votes. [10] Includes Hawaii figure for July 1959.

Source: 1900–1956, Edgar Eugene Robinson, *The Presidential Vote* and *They Voted for Roosevelt*, Stanford University Press, Stanford, 1934 and 1947, respectively. Later data, Elections Research Center, Washington, D.C., *America at the Polls* (copyright); U.S. Congress, Clerk of the House, *Statistics of the Presidential and Congressional Election* and *Statistics of the Congressional Election*.

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No. 681. Electoral Vote Cast for President, by Major Political Parties, by States: 1932 to 1972

[D = Democratic, R = Republican. See also *Historical Statistics, Colonial Times to 1957*, series Y 32-79]

STATE	1932	1936	1940	1944	1948 [1]	1952	1956 [2]	1960 [3]	1964	1968 [4]	1972
Democratic	472	523	449	432	303	89	73	303	486	191	17
Republican	59	8	82	99	189	442	457	219	52	301	520
Ala	D-11	D-11	D-11	D-11	(5)	D-11	[6]D-10	[7]D-6	R-10	(5)	R-9
Alaska	(X)	(X)	(X)	(X)	(X)	(X)	(X)	R-3	D-3	R-3	R-3
Ariz	D-3	D-3	D-3	D-4	D-4	R-4	R-4	R-4	R-5	R-5	R-6
Ark	D-9	D-9	D-9	D-9	D-9	D-8	D-8	D-8	D-6	(5)	R-6
Calif	D-22	D-22	D-22	D-25	D-25	R-32	R-32	R-32	D-40	R-40	R-45
Colo	D-6	D-6	R-6	R-6	D-6	R-6	R-6	R-6	D-6	R-6	R-7
Conn	R-8	D-8	D-8	D-8	R-8	R-8	R-8	D-8	D-8	D-8	R-8
Del	R-3	D-3	D-3	D-3	R-3	R-3	R-3	D-3	D-3	R-3	R-3
D.C	(X)	(X)	(X)	(X)	(X)	(X)	(X)	(X)	D-3	D-3	D-3
Fla	D-7	D-7	D-7	D-8	D-8	R-10	R-10	R-10	D-14	R-14	R-17
Ga	D-12	D-12	D-12	D-12	D-12	D-12	D-12	D-12	R-12	(5)	R-12
Hawaii	(X)	(X)	(X)	(X)	(X)	(X)	(X)	D-3	D-4	D-4	R-4
Idaho	D-4	D-4	D-4	D-4	D-4	R-4	R-4	R-4	D-4	R-4	R-4
Ill	D-29	D-29	D-29	D-28	D-28	R-27	R-27	D-27	D-26	R-26	R-26
Ind	D-14	D-14	R-14	R-13	R-13	R-13	R-13	R-13	D-13	R-13	R-13
Iowa	D-11	D-11	R-11	R-10	D-10	R-10	R-10	R-10	D-9	R-9	R-8
Kans	D-9	D-9	R-9	R-8	R-8	R-8	R-8	R-8	D-7	R-7	R-7
Ky	D-11	D-11	D-11	D-11	D-11	D-10	R-10	D-10	D-9	R-9	R-9
La	D-10	D-10	D-10	D-10	(5)	D-10	R-10	D-10	R-10	(5)	R-10
Maine	R-5	R-5	R-5	R-5	R-5	R-5	R-5	R-5	D-4	D-4	R-4
Md	D-8	D-8	D-8	D-8	R-8	R-9	R-9	D-9	D-10	D-10	R-10
Mass	D-17	D-17	D-17	D-16	D-16	R-16	R-16	D-16	D-14	D-14	D-14
Mich	D-19	D-19	R-19	D-19	R-19	R-20	R-20	D-20	D-21	D-21	R-21
Minn	D-11	D-11	D-11	D-11	D-11	R-11	R-11	D-11	D-10	D-10	R-10
Miss	D-9	D-9	D-9	D-9	(5)	D-8	D-8	(5)	R-7	(5)	R-7
Mo	D-15	D-15	D-15	D-15	D-15	R-13	D-13	D-13	D-12	R-12	R-12
Mont	D-4	D-4	D-4	D-4	D-4	R-4	R-4	R-4	D-4	R-4	R-4
Nebr	D-7	D-7	R-7	R-6	R-6	R-6	R-6	R-6	D-5	R-5	R-5
Nev	D-3	D-3	D-3	D-3	D-3	R-3	R-3	D-3	D-3	R-3	R-3
N.H	R-4	D-4	D-4	D-4	R-4	R-4	R-4	R-4	D-4	R-4	R-4
N.J	D-16	D-16	D-16	D-16	R-16	R-16	R-16	D-16	D-17	R-17	R-17
N. Mex	D-3	D-3	D-3	D-4	D-4	R-4	R-4	D-4	D-4	R-4	R-4
N.Y	D-47	D-47	D-47	D-47	R-47	R-45	R-45	D-45	D-43	D-43	R-41
N.C	D-13	D-13	D-13	D-14	D-14	D-14	D-14	D-14	D-13	R-12	R-13
N. Dak	D-4	D-4	R-4	R-4	R-4	R-4	R-4	R-4	D-4	R-4	R-3
Ohio	D-26	D-26	D-26	R-25	D-25	R-25	R-25	R-25	D-26	R-26	R-25
Okla	D-11	D-11	D-11	D-10	D-10	R-8	R-8	[8]R-7	D-8	R-8	R-8
Oreg	D-5	D-5	D-5	D-6	R-6	R-6	R-6	R-6	D-6	R-6	R-6
Pa	R-36	D-36	D-36	D-35	R-35	R-32	R-32	D-32	D-29	D-29	R-27
R.I	D-4	D-4	D-4	D-4	D-4	R-4	R-4	D-4	D-4	D-4	R-4
S.C	D-8	D-8	D-8	D-8	(5)	D-8	D-8	D-8	R-8	R-8	R-8
S. Dak	D-4	D-4	R-4	R-4	R-4	R-4	R-4	R-4	D-4	R-4	R-4
Tenn	D-11	D-11	D-11	D-12	[9]D-11	R-11	R-11	R-11	D-11	R-11	R-10
Tex	D-23	D-23	D-23	D-23	D-23	R-24	R-24	D-24	D-25	D-25	R-26
Utah	D-4	D-4	D-4	D-4	D-4	R-4	R-4	R-4	D-4	R-4	R-4
Vt	R-3	R-3	R-3	R-3	R-3	R-3	R-3	R-3	D-3	R-3	R-3
Va	D-11	D-11	D-11	D-11	D-11	R-12	R-12	R-12	D-12	R-12	[10]R-11
Wash	D-8	D-8	D-8	D-8	D-8	R-9	R-9	R-9	D-9	D-9	R-9
W. Va	D-8	D-8	D-8	D-8	D-8	D-8	R-8	D-8	D-7	D-7	R-6
Wis	D-12	D-12	D-12	D-12	R-12	D-12	R-12	R-12	R-12	R-12	R-11
Wyo	D-3	D-3	D-3	D-3	R-3	D-3	R-3	R-3	D-3	R-3	R-3

X Not applicable.
[1] Excludes 39 electoral votes cast for States' Rights Democratic candidates as follows: Alabama 11; Louisiana 10; Mississippi 9; South Carolina 8; and Tennessee 1.
[2] Excludes 1 electoral vote cast for Walter B. Jones.
[3] Excludes 15 electoral votes cast for Harry F. Byrd as follows: Alabama 6; Mississippi 8; and Oklahoma 1.
[4] Excludes 46 electoral votes cast for George C. Wallace as follows: Alabama 10; Arkansas 6; Georgia 12; Louisiana 10; Mississippi 7; North Carolina 1.
[5] Excludes 1 electoral vote cast for John Hospers.

Source: U.S. Congress, Clerk of the House, *Statistics of the Presidential and Congressional Election*.

No. 682. Popular Vote Cast for President, and Percent of Vote for Majority Party, by Regions and States: 1948 to 1964

[In thousands, except percent. D = Democratic, R = Republican. Majority party vote refers to the party vote representing either a majority or a plurality for the victorious party. See also table 680; for current figures, see table 683. See also *Historical Statistics, Colonial Times to 1957*, series Y 80-128]

REGION AND STATE	1948		1952		1956		1960		1964	
	Vote	Percent for majority party	Vote	Percent for majority party	Vote	Percent for majority party	Vote	Percent for majority party	Vote	Percent for majority party
Total	48,794	D-49.6	61,551	R-55.1	62,027	R-57.4	68,838	D-49.7	70,645	D-61.1
Northeast	15,800	R-47.8	18,801	R-55.1	18,782	R-60.7	20,053	D-52.7	19,623	D-68.3
North Central	17,540	D-50.3	21,153	R-57.6	21,114	R-58.6	22,979	R-52.2	22,209	D-61.3
South	8,244	D-52.6	12,445	D-50.5	12,478	R-51.1	14,389	D-49.9	16,597	D-53.3
West	7,209	D-49.4	9,151	R-57.3	9,654	R-56.4	11,417	R-51.1	12,214	D-59.4
Alabama	215	(1)	426	D-64.6	497	D-56.5	570	D-56.8	690	R-69.5
Alaska	(X)	(X)	(X)	(X)	(X)	(X)	61	D-50.9	67	D-65.9
Arizona	177	D-53.8	261	R-58.3	290	R-61.0	398	R-55.5	481	R-80.4
Arkansas	242	D-61.7	405	D-55.9	407	D-52.5	429	D-50.2	560	D-56.1
California	4,022	D-47.6	5,142	R-56.3	5,466	R-55.4	6,507	R-50.1	7,058	D-59.1
Colorado	515	D-51.9	630	R-60.3	657	R-60.0	736	R-54.6	777	D-61.3
Connecticut	854	R-49.5	1,097	R-55.7	1,117	R-63.7	1,223	D-53.7	1,219	D-67.8
Delaware	139	R-50.0	174	R-51.8	178	R-55.1	197	D-50.6	201	D-60.9
Dist. of Columbia	(X)	(X)	(X)	(X)	(X)	(X)	(X)	(X)	199	D-85.5
Florida	578	D-48.8	969	R-55.0	1,126	R-57.2	1,544	R-51.5	1,854	D-61.1
Georgia	419	D-60.8	656	D-69.7	670	D-66.4	733	D-62.5	1,139	R-54.1
Hawaii	(X)	(X)	(X)	(X)	(X)	(X)	185	(1)	207	D-78.8
Idaho	215	D-50.0	276	R-65.4	273	R-61.2	300	R-53.8	292	D-60.9
Illinois	3,984	D-50.1	4,481	R-54.8	4,407	R-59.5	4,757	D-50.0	4,703	D-59.5
Indiana	1,656	R-49.6	1,955	R-58.1	1,975	R-59.9	2,135	R-55.0	2,092	D-66.0
Iowa	1,038	D-50.3	1,269	R-63.8	1,235	R-59.1	1,274	R-56.7	1,188	D-61.9
Kansas	789	R-53.6	896	R-68.8	866	R-65.4	929	R-60.4	858	D-64.1
Kentucky	823	D-56.7	993	D-49.9	1,054	R-54.3	1,124	R-53.6	1,046	D-64.0
Louisiana	416	(1)	652	D-52.9	618	R-53.3	808	D-50.4	896	R-56.8
Maine	265	R-56.4	352	R-66.0	352	R-70.9	422	R-57.0	381	D-68.8
Maryland	597	R-49.4	902	R-55.4	933	R-60.0	1,055	D-53.6	1,116	D-66.8
Massachusetts	2,107	D-54.7	2,383	R-54.2	2,349	R-59.3	2,469	D-60.2	2,345	D-76.2
Michigan	2,110	R-49.2	2,799	R-55.4	3,080	R-55.6	3,318	D-50.9	3,203	D-66.7
Minnesota	1,212	D-57.2	1,379	R-55.3	1,340	R-53.7	1,542	D-50.6	1,554	D-63.8
Mississippi	192	(1)	286	D-60.4	248	D-58.2	298	D-36.3	409	R-87.1
Missouri	1,579	D-50.1	1,892	R-50.7	1,833	D-50.1	1,934	D-50.3	1,818	D-64.0
Montana	224	D-53.1	265	R-59.4	271	R-57.1	278	R-51.1	279	D-68.9
Nebraska	480	R-64.2	610	R-69.2	577	R-65.5	613	R-62.1	584	D-62.6
Nevada	62	D-50.4	82	R-61.4	97	R-56.0	107	D-51.2	135	D-66.6
New Hampshire	231	R-52.4	273	R-60.9	267	R-66.1	296	R-53.4	288	D-63.9
New Jersey	1,950	R-50.3	2,419	R-56.8	2,484	R-64.7	2,773	D-50.0	2,848	D-68.6
New Mexico	187	D-56.4	239	R-55.4	254	R-57.8	311	D-50.2	329	D-60.0
New York	6,177	R-46.0	7,128	R-55.5	7,096	R-61.2	7,291	D-52.5	7,166	D-68.6
North Carolina	791	D-58.0	1,211	D-53.9	1,166	D-50.7	1,369	D-52.1	1,425	D-56.2
North Dakota	221	R-52.2	270	R-71.0	254	R-61.7	278	R-55.4	258	D-58.0
Ohio	2,936	D-49.5	3,701	R-56.8	3,702	R-61.1	4,162	R-53.3	3,969	D-62.9
Oklahoma	722	D-62.7	949	R-54.6	859	R-55.1	903	R-59.0	932	D-55.7
Oregon	524	R-49.8	695	R-60.5	736	R-55.2	776	R-52.6	786	D-63.7
Pennsylvania	3,735	R-50.9	4,581	R-52.7	4,577	R-56.5	5,007	D-51.1	4,823	D-64.9
Rhode Island	328	D-57.6	414	R-50.9	388	R-58.3	406	D-63.6	390	D-80.9
South Carolina	143	(1)	341	D-50.7	301	D-45.4	387	D-51.2	525	R-58.9
South Dakota	250	R-51.8	294	R-69.3	294	R-58.4	306	R-58.2	293	D-58.6
Tennessee	550	D-49.1	893	R-50.0	939	R-49.2	1,052	R-52.9	1,144	D-55.5
Texas	1,250	D-66.0	2,076	R-53.1	1,955	R-55.3	2,311	D-50.5	2,627	D-63.3
Utah	276	D-54.0	330	R-58.9	334	R-64.6	375	R-54.8	401	D-54.7
Vermont	123	R-61.5	154	R-71.5	153	R-72.2	167	R-58.6	163	D-66.3
Virginia	419	D-47.9	620	R-56.3	698	R-55.4	771	R-52.4	1,042	D-53.5
Washington	905	D-52.6	1,103	R-54.3	1,151	R-53.9	1,242	R-50.7	1,259	D-62.0
West Virginia	749	D-57.3	874	D-51.9	831	R-54.1	838	D-52.7	792	D-67.9
Wisconsin	1,277	D-50.7	1,607	R-61.0	1,551	R-61.6	1,729	R-51.8	1,692	D-62.1
Wyoming	101	D-51.6	129	R-62.7	124	R-60.1	141	R-55.0	143	D-56.6

X Not applicable.
[1] Vote represented a victory for Thurmond (States' Rights Democratic Party) as follows: Alabama, 79.7 percent; Louisiana, 49.1 percent; Mississippi, 87.2 percent; and South Carolina, 72.0 percent.
[2] Percentages of 50.0 for both parties based on following vote: Democratic, 92,410; Republican, 92,295.

Source: 1948, Elections Research Center, Washington, D.C., *America at the Polls* (copyright); 1952-56, U.S. Bureau of the Census, *Congressional District Data Book (Districts of the 85th Congress)*, 1963; and 1960 and 1964, U.S. Congress, Clerk of the House, *Statistics of the Presidential and Congressional Election*.

No. 683. Popular Vote Cast for President, by Political Parties, by Regions and States: 1968 and 1972

[In thousands, except percent. See also *Historical Statistics, Colonial Times to 1957*, series Y 80-128]

Region and State	1968						1972					
	Total	Democratic	Republican	Other parties	Percent of total		Total	Democratic	Republican	Other parties	Percent of total	
					Democratic	Republican					Democratic	Republican
Total	**73,212**	**31,275**	**31,785**	**10,151**	**42.7**	**43.4**	**77,719**	**29,170**	**47,170**	**1,378**	**37.5**	**60.7**
Northeast	19,239	9,657	8,278	1,304	50.2	43.0	19,953	8,277	11,483	192	41.5	57.5
North Central	22,208	9,703	10,394	2,111	43.7	46.8	23,192	9,127	13,711	353	39.4	59.1
South	19,176	6,419	6,990	5,770	33.5	36.5	20,046	6,087	13,666	295	30.4	68.2
West	12,589	5,497	6,127	966	43.7	48.7	14,529	5,679	8,309	543	39.1	57.2
Alabama	1,050	197	147	[1] 706	18.7	14.0	1,006	257	729	20	25.5	72.4
Alaska	83	35	38	10	42.6	45.3	96	33	55	7	34.6	58.1
Arizona	487	171	267	50	35.0	54.8	623	199	403	22	31.9	64.7
Arkansas	620	188	191	241	30.4	30.8	651	200	449	3	30.7	68.9
California	7,252	3,244	3,468	540	44.7	47.8	8,368	3,476	4,602	290	41.5	55.0
Colorado	811	335	409	67	41.3	50.5	954	330	597	27	34.6	62.6
Connecticut	1,256	622	557	78	49.5	44.3	1,384	555	811	18	40.1	58.6
Delaware	214	89	97	28	41.6	45.1	236	92	140	3	39.2	59.6
Dist. of Columbia	171	140	31	–	81.8	18.2	163	128	35	1	78.1	21.6
Florida	2,188	677	887	624	30.9	40.5	2,583	718	1,858	7	27.8	71.9
Georgia	1,250	334	380	536	26.8	30.4	1,175	290	881	4	24.6	75.0
Hawaii	236	141	91	3	59.8	38.7	270	101	169	–	37.5	62.5
Idaho	291	89	165	37	30.7	56.8	310	81	199	30	26.0	64.2
Illinois	4,620	2,040	2,175	405	44.2	47.1	4,723	1,913	2,788	22	40.5	59.0
Indiana	2,124	807	1,008	249	38.0	50.3	2,126	709	1,405	12	33.3	66.1
Iowa	1,168	477	619	72	40.8	53.0	1,226	496	706	24	40.5	57.6
Kansas	873	303	479	91	34.7	54.8	916	270	620	26	29.5	67.7
Kentucky	1,056	398	462	196	37.6	43.8	1,067	371	676	20	34.8	63.4
Louisiana	1,097	310	258	530	28.2	23.5	1,051	298	687	66	28.4	65.3
Maine	393	217	169	6	55.3	43.1	417	161	256	–	38.5	61.5
Maryland	1,235	538	518	179	43.6	41.9	1,354	506	829	19	37.4	61.3
Massachusetts	2,332	1,469	767	96	63.0	32.9	2,489	1,333	1,112	14	54.2	45.2
Michigan	3,306	1,593	1,371	343	48.2	41.5	3,490	1,459	1,962	69	41.8	56.2
Minnesota	1,589	858	659	72	54.0	41.5	1,742	802	898	41	46.1	51.6
Mississippi	655	151	89	415	23.0	13.5	646	127	505	14	19.6	78.2
Missouri	1,810	791	812	206	43.7	44.9	1,856	697	1,154	5	37.6	62.2
Montana	274	114	139	21	41.6	50.6	318	120	184	13	37.8	57.9
Nebraska	537	171	321	45	31.8	59.8	576	170	406	–	29.5	70.5
Nevada	154	61	73	20	39.3	47.5	182	66	116	–	36.3	63.7
New Hampshire	297	131	155	12	43.9	52.1	334	116	214	4	34.9	64.0
New Jersey	2,875	1,264	1,325	286	44.0	46.1	2,997	1,102	1,846	50	36.8	61.6
New Mexico	327	130	170	28	39.7	51.8	386	141	236	10	36.5	61.0
New York	6,792	3,378	3,008	405	49.7	44.3	7,166	2,951	4,193	22	41.2	58.5
North Carolina	1,587	464	627	496	29.2	39.5	1,519	439	1,055	25	28.9	69.5
North Dakota	248	95	139	14	38.2	55.9	281	100	174	6	35.8	62.1
Ohio	3,960	1,701	1,791	468	42.9	45.2	4,095	1,559	2,442	94	38.1	59.6
Oklahoma	943	302	450	192	32.0	47.7	1,030	247	759	24	24.0	73.7
Oregon	820	359	408	52	43.8	49.8	928	393	487	49	42.3	52.4
Pennsylvania	4,748	2,259	2,090	399	47.5	44.0	4,892	1,797	2,715	81	39.1	59.1
Rhode Island	385	247	122	16	64.0	31.8	416	195	220	1	46.8	53.0
South Carolina	667	197	254	215	29.6	38.1	674	187	477	10	27.7	70.8
South Dakota	281	118	150	13	42.0	53.3	307	140	166	1	45.5	54.2
Tennessee	1,249	351	473	425	28.1	37.8	1,301	357	813	31	29.7	67.7
Texas	3,079	1,267	1,228	585	41.1	39.9	3,471	1,154	2,299	18	38.3	66.2
Utah	423	157	239	27	37.1	56.5	478	126	324	29	26.4	67.6
Vermont	161	70	85	6	43.5	52.8	187	68	117	2	36.5	62.7
Virginia	1,361	442	590	329	32.5	43.4	1,457	439	988	30	30.1	67.8
Washington	1,304	616	589	100	47.2	45.1	1,471	568	837	65	38.6	56.9
West Virginia	754	374	308	73	49.6	40.8	762	277	485	–	36.4	63.6
Wisconsin	1,692	749	810	133	44.3	47.9	1,853	810	959	83	43.7	53.1
Wyoming	127	45	71	11	35.5	55.8	146	44	100	1	30.5	69.0

– Represents zero.
[1] Includes vote cast for George C. Wallace as a Democratic Party candidate.

Source: U.S. Congress, Clerk of the House, *Statistics of the Presidential and Congressional Election of Nov. 5, 1968*, and *Statistics of the Presidential and Congressional Election of Nov. 7, 1972*. (In some cases, figures have been revised by Elections Research Center, Washington, D.C.)

No. 686. Vote Cast for United States Senators, by Major Political Parties, by States: 1968, 1970, and 1972

[In thousands, except percent. Excludes elections to fill vacancies for unexpired terms]

State	1968				1970				1972			
	Total [1]	Democratic	Republican	Percent for majority party	Total [1]	Democratic	Republican	Percent for majority party	Total [1]	Democratic	Republican	Percent for majority party
Alabama	913	639	201	70.0	(X)	(X)	(X)	(X)	1,051	654	348	62.3
Alaska	81	37	30	45.1	80	32	48	59.6	96	22	74	77.3
Arizona	480	205	275	57.2	408	180	228	56.0	(X)	(X)	(X)	(X)
Arkansas	592	350	242	59.1	(X)	(X)	(X)	(X)	635	386	248	60.9
California	7,102	3,680	3,329	51.8	6,492	3,497	2,878	53.9	(X)	(X)	(X)	(X)
Colorado	786	326	460	58.6	(X)	(X)	(X)	(X)	926	458	448	49.4
Connecticut	1,207	655	551	54.3	1,089	368	455	41.7	(X)	(X)	(X)	(X)
Delaware	(X)	(X)	(X)	(X)	161	65	95	58.8	230	116	113	50.5
Florida	2,024	893	1,131	55.9	1,675	902	773	53.9	(X)	(X)	(X)	(X)
Georgia	(X)	(X)	(X)	(X)	(X)	(X)	(X)	(X)	1,179	636	542	54.0
Hawaii	227	189	34	83.4	241	117	124	51.6	(X)	(X)	(X)	(X)
Idaho	288	173	114	60.3	(X)	(X)	(X)	(X)	310	141	162	53.5
Illinois	4,450	2,073	2,359	53.0	3,599	2,065	1,520	57.4	4,608	1,721	2,867	62.5
Indiana	2,053	1,060	989	51.7	1,738	871	867	50.1	(X)	(X)	(X)	(X)
Iowa	1,144	575	568	50.2	(X)	(X)	(X)	(X)	1,203	663	531	55.1
Kansas	817	316	491	60.1	(X)	(X)	(X)	(X)	872	201	623	71.5
Kentucky	943	449	484	51.4	(X)	(X)	(X)	(X)	1,038	529	494	50.9
Louisiana	519	519	–	100.0	(X)	(X)	(X)	(X)	1,085	599	207	55.2
Maine	(X)	(X)	(X)	(X)	324	200	124	61.7	421	224	197	53.2
Maryland	1,134	444	542	47.8	956	460	485	50.7	(X)	(X)	(X)	(X)
Massachusetts	(X)	(X)	(X)	(X)	1,935	1,203	716	62.2	2,371	823	1,506	64.7
Michigan	(X)	(X)	(X)	(X)	2,610	1,745	858	66.8	3,407	1,577	1,781	53.0
Minnesota	(X)	(X)	(X)	(X)	1,365	788	568	57.8	1,732	981	742	56.7
Mississippi	(X)	(X)	(X)	(X)	324	287	–	88.4	646	375	250	58.1
Missouri	1,738	887	851	51.1	1,284	655	618	51.0	(X)	(X)	(X)	(X)
Montana	(X)	(X)	(X)	(X)	248	150	98	60.5	315	164	151	52.0
Nebraska	(X)	(X)	(X)	(X)	459	218	241	52.5	569	266	302	53.1
Nevada	153	84	69	54.8	148	85	61	57.6	(X)	(X)	(X)	(X)
New Hampshire	287	117	170	59.3	(X)	(X)	(X)	(X)	324	184	140	56.9
New Jersey	(X)	(X)	(X)	(X)	2,142	1,157	903	54.0	2,792	984	1,744	62.5
New Mexico	(X)	(X)	(X)	(X)	290	151	135	52.3	378	174	204	54.0
New York	6,582	2,151	3,270	49.7	5,905	2,171	1,434	[2] 38.8	(X)	(X)	(X)	(X)
North Carolina	1,437	870	567	60.6	(X)	(X)	(X)	(X)	1,473	677	795	54.0
North Dakota	239	81	158	64.8	220	135	83	61.3	(X)	(X)	(X)	(X)
Ohio	3,743	1,814	1,929	51.5	3,151	1,496	1,566	49.7	(X)	(X)	(X)	(X)
Oklahoma	909	420	470	51.7	(X)	(X)	(X)	(X)	1,005	478	517	51.4
Oregon	814	405	409	50.2	(X)	(X)	(X)	(X)	921	425	495	53.7
Pennsylvania	4,624	2,118	2,400	51.9	3,644	1,654	1,874	51.4	(X)	(X)	(X)	(X)
Rhode Island	(X)	(X)	(X)	(X)	341	230	107	67.5	413	222	189	53.7
South Carolina	653	404	249	61.9	(X)	(X)	(X)	(X)	672	245	427	63.5
South Dakota	280	159	121	56.8	(X)	(X)	(X)	(X)	306	178	132	57.9
Tennessee	(X)	(X)	(X)	(X)	1,097	520	563	51.3	1,164	441	717	61.5
Texas	(X)	(X)	(X)	(X)	2,230	1,194	1,036	53.5	3,414	1,812	1,823	53.4
Utah	419	192	225	53.7	374	210	159	56.2	(X)	(X)	(X)	(X)
Vermont	157	–	157	100.0	155	62	91	58.9	71	24	46	64.3
Virginia	(X)	(X)	(X)	(X)	947	298	145	[3] 53.5	1,396	644	718	51.4
Washington	1,236	796	436	64.4	1,067	879	171	82.4	(X)	(X)	(X)	(X)
West Virginia	(X)	(X)	(X)	(X)	446	346	100	77.6	732	486	246	66.5
Wisconsin	1,655	1,021	634	61.7	1,339	948	381	70.8	(X)	(X)	(X)	(X)
Wyoming	(X)	(X)	(X)	(X)	120	67	53	55.8	142	41	101	71.3

– Represents zero. X Not applicable. [1] Includes vote cast for minor parties; excludes scattered votes.
[2] Represents 2,288,190 cast for Conservative candidate.
[3] Represents 806,633 cast for Independent candidate.

Source: U.S. Congress, Clerk of the House, *Statistics of the Presidential and Congressional Election* and *Statistics of the Congressional Election*. (In some cases, figures have been revised by Elections Research Center, Washington, D.C.)

No. 689. Vote Cast for United States Representatives, by Major Political Parties, by States: 1968, 1970, and 1972

[**In thousands, except percent.** In each State, totals represent the sum of votes cast in each Congressional District, except as follows: In Alaska, Delaware, Nevada, Vermont, and Wyoming, only 1 Representative was elected from the State at large. In numerous States, one or other of the major parties had no candidate in some districts. In those cases where votes of a party as such are cast in endorsement of a candidate of another party, votes are counted as for the endorsing party. See also footnotes below]

State	1968				1970				1972			
	Total [1]	Democratic	Republican	Percent for majority party	Total [1]	Democratic	Republican	Percent for majority party	Total [1]	Democratic	Republican	Percent for majority party
Total	**66,109**	**33,045**	**31,850**	**50.0**	**54,173**	**28,923**	**24,415**	**53.4**	**[2] 71,188**	**[2] 36,780**	**[2] 33,064**	**[2] 51.7**
Ala	911	547	247	60.0	742	475	189	64.0	973	544	384	55.9
Alaska	80	37	44	54.2	80	44	36	55.1	95	54	42	56.2
Ariz	464	203	261	56.2	402	182	219	54.3	594	284	310	52.2
Ark. [3]	298	140	158	53.0	173	58	116	66.7	187	42	145	77.3
Calif	6,880	3,037	3,741	54.4	6,321	3,124	3,095	49.4	8,007	4,162	3,720	52.0
Colo	780	362	393	50.3	637	310	318	49.9	913	428	480	52.6
Conn	1,207	625	570	51.8	1,071	532	525	49.7	1,351	657	691	51.1
Del	201	83	118	58.7	160	71	86	53.7	226	83	141	62.5
D.C	(X)	(X)	(X)	(X)	(X)	(X)	(X)	(X)	157	95	39	60.6
Fla. [4]	1,770	1,012	758	57.2	1,250	681	569	54.5	1,932	1,031	901	53.4
Ga	945	751	194	79.4	879	654	226	74.3	892	639	253	71.6
Hawaii [5]	243	162	79	66.6	208	176	32	84.7	275	154	121	55.9
Idaho	277	116	156	56.4	234	88	144	61.4	302	108	188	62.3
Ill	4,422	2,054	2,368	53.6	3,495	1,614	1,681	51.9	4,385	2,147	2,223	50.7
Ind	2,039	944	1,095	53.7	1,728	879	849	50.9	2,110	974	1,134	53.7
Iowa	1,123	514	610	54.3	780	388	388	49.8	1,196	616	577	51.5
Kans	817	310	508	62.1	720	304	407	56.6	878	281	582	66.2
Ky	863	441	421	51.0	474	248	223	52.3	988	494	488	50.1
La	629	511	118	81.2	363	330	20	91.0	678	574	87	84.6
Maine	384	216	168	56.2	318	196	122	61.5	413	219	195	52.9
Md	1,020	536	484	52.5	886	453	430	51.1	1,219	634	585	52.0
Mass	2,057	1,033	971	50.2	1,800	1,020	718	56.6	2,159	1,244	806	57.6
Mich	3,044	1,533	1,507	50.4	2,562	1,314	1,241	51.3	3,273	1,536	1,710	52.2
Minn	1,534	732	801	52.2	1,341	710	629	52.9	1,690	897	761	53.1
Miss	449	415	34	92.5	312	269	29	86.2	588	387	185	65.9
Mo	1,720	959	760	55.8	1,197	692	494	57.8	1,833	1,092	737	59.6
Mont	263	115	149	56.5	249	141	108	56.6	315	191	124	60.5
Nebr	522	208	309	59.2	448	165	283	64.1	569	194	375	66.0
Nev	144	104	40	72.1	138	113	24	82.5	180	86	94	52.2
N.H	283	94	189	66.8	214	67	146	68.5	315	93	222	70.4
N.J	2,698	1,288	1,364	50.6	2,101	1,099	985	52.3	2,832	1,391	1,416	50.0
N. Mex. [6]	310	148	160	51.8	285	129	152	53.4	374	210	163	56.3
N.Y. [7]	6,094	2,806	2,602	46.0	5,446	2,721	2,448	50.0	6,609	3,050	2,925	46.1
N.C	1,398	765	633	54.7	930	514	411	55.3	1,351	735	610	54.4
N. Dak	229	85	140	61.1	210	88	122	58.1	269	73	195	72.7
Ohio	3,636	1,428	2,208	60.7	3,042	1,323	1,706	56.1	3,836	1,684	2,071	54.0
Okla. [4]	810	445	365	54.9	563	316	245	56.2	817	497	310	60.8
Oreg	787	370	417	53.0	653	338	315	51.8	870	479	390	55.1
Pa	4,577	2,286	2,230	49.9	3,613	1,945	1,612	53.8	4,463	2,173	2,261	51.1
R.I	365	222	141	60.9	326	208	115	63.9	388	243	139	62.7
S.C	628	416	204	66.3	427	309	116	72.5	631	329	302	52.1
S. Dak	272	112	159	58.6	235	128	107	54.3	301	160	141	53.1
Tenn	1,013	486	508	50.1	989	580	403	58.6	1,102	505	589	53.5
Tex	2,396	1,720	676	71.8	1,833	1,339	477	73.0	2,886	2,032	835	70.4
Utah	416	146	270	64.8	373	182	187	50.1	501	260	203	51.9
Vt	157	62	95	60.6	153	44	104	68.0	186	65	121	65.0
Va. [4]	1,269	621	601	48.9	906	465	414	51.4	1,271	627	590	49.4
Wash	1,204	624	576	51.8	1,022	609	404	59.5	1,302	858	439	65.9
W. Va	712	434	278	61.0	441	288	153	65.3	721	477	244	66.2
Wis	1,841	742	895	54.6	1,326	740	577	55.8	1,801	1,013	767	56.2
Wyo	123	46	77	62.7	116	58	58	50.3	146	76	71	51.7

X Not applicable. [1] Includes vote cast for minor parties. [2] Excludes District of Columbia.
[3] Arkansas law does not require tabulation of votes for unopposed candidates. 1968 data for 1st and 3d Districts; 1970 and 1972 data for 3d District only.
[4] As of 1970, Florida and Oklahoma do not require tabulation of votes for unopposed candidates. In 1972, all but 1st, 2d, and 9th Districts were counted for Florida.
[5] In 1968, voters entitled to vote for any 2 candidates; total ascertained by adding the highest vote received by a single candidate in each political party; in 1970 there were two separate districts.
[6] Election by districts in 1968 and 1970. [7] Includes endorsing votes cast by other parties for Democratic and Republican candidates. [8] In 1970, includes "provisional votes."

Source: U.S. Congress, Clerk of the House, *Statistics of the Presidential and Congressional Election* and *Statistics of the Congressional Election*. (In some cases, revisions by Elections Research Center, Washington, D.C.)

86. Selected advertising rates for KOOL-TV (Phoenix, Arizona) are: 30 minutes – $3,200; 5 minutes – $800; and 10 seconds – $200. Selected advertising rates for KNXT-TV (Los Angeles, California) are: 30 minutes – $3,150; 1 minute – $5,500; and 10 seconds – $1,300. Selected advertising rates for WBBM-TV (Chicago, Illinois) are: 30 minutes – $15,000; 15 minutes – $8,000; and 5 minutes – $4,500. Selected advertising rates for WJBK-TV (Detroit, Michigan) are: 30 minutes – $2,300; 5 minutes – $970; and 10 seconds – $975. Selected advertising rates for KCMO-TV (Kansas City, Missouri) are: 30 minutes – $960; and 15 minutes – $640. Selected advertising rates for KOIN-TV (Portland, Oregon) are: 30 minutes – $1,000; 5 minutes – $400; and 10 seconds – $275. Selected advertising rates for KAUZ-TV (Wichita Falls, Texas) are: 30 minutes – $300; and 30 seconds – $130. Selected advertising rates for KSD-TV (St. Louis, Missouri) are: 30 minutes – $1,580; 5 minutes – $850; and 10 seconds – $390. Selected advertising rates for WNAC-TV (Boston, Massachusetts) are: 30 minutes – $2,600; 15 minutes $1,700; and 10 seconds – $1,000. Selected advertising rates for WCBS-TV (New York, New York) are: 30 minutes – $8,000; 5 minutes – $3,500; and 10 seconds

(prime time) – $3,000.

87. Common Cause has received approximately $70,000 from the Rockefeller family, including $55,000 from John D. Rockefeller, III, and $1,500 from Nelson Rockefeller.

88. The amount of money expended in conducting a campaign for election to the offices of President and Vice President of the United States, United States Senator, and Member of the United States House of Representatives, and for the nomination to be a candidate for such offices, has increased over the years.

89. The follwing chart reflects reported national-level political spending for Presidential races from 1912 through 1968.

Reported National-Level Political Spending

Year, Man Elected		Expenditures		Total Vote	Cost Per Vote†
1912—Wilson (D)	Total:	$ 2,876,816		15,[illegible]4,000	19 ¢
	Rep:	1,076,548	37.4%		
	Dem:	1,134,848	39.4		
	Prog:	665,420	23.1		
1916—Wilson (D)	Total:	$ 4,726,155		18,525,000	26 ¢
	Rep:	2,441,565	51.7%		
	Dem:	2,284,590	48.3		
1920—Harding (R)	Total:	$6,887,872		26,769,000	26 ¢
	Rep:	5,417,501	78.7%		
	Dem:	1,470,371	21.3		
1924—Coolidge (R)	Total:	$ 5,366,277		29,095,000	18 ¢
	Rep:	4,020,478	74.9%		
	Dem:	1,108,836	20.7		
	Prog:	236,963	4.4		
1928—Hoover (R)	Total:	$11,598,461		36,806,000	32 ¢
	Rep:	6,256,111	53.9%		
	Dem:	5,342,350	46.1		
1932—Roosevelt (D)	Total:	$ 5,146,027		39,759,000	13 ¢
	Rep:	2,900,052	56.4%		
	Dem:	2,245,975	43.6		
1936—Roosevelt (D)	Total:	$14,116,343		45,655,000	31 ¢
	Rep:	8,951,602	63.4%		
	Dem:	5,164,741	36.6		
1940—Roosevelt (D)	Total:	$26,917,051		49,900,000	54 ¢
	Rep:	18,864,117	70.1%		
	Dem:	8,052,898	29.9		
1944—Roosevelt (D)	Total:	$26,193,311		47,977,000	55 ¢
	Rep:	16,195,376	61.8%		
	Dem:	9,997,935	38.2		
1948—Truman (D)	Total:	$8,771,819		48,794,000	18 ¢
	Rep:	3,686,775	42.0%		
	Dem:	2,266,231	25.8		
	Lab:	1,291,343	14.7		
	Prog:	1,365,389	15.6		
	*SR:	162,081	1.8		
1952—Eisenhower (R)	Total:	$19,421,287		61,551,000	32 ¢
	Rep:	12,229,239	63.0%		
	Dem:	5,121,698	26.3		
	Lab:	2,070,350	10.7		
1956—Eisenhower (R)	Total:	$21,518,260		62,027,000	35 ¢
	Rep:	13,220,144	61.4%		
	Dem:	6,492,634	30.2		
	Lab:	1,805,482	8.4		
1960—Kennedy (D)	Total:	$27,202,155		68,838,000	40 ¢
	Rep:	12,950,232	47.6%		
	Dem:	11,800,979	43.4		
	Lab:	2,450,944	9.0		
1964—Johnson (D)	Total:	$38,079,829		70,645,000	54 ¢
	Rep:	19,314,796	50.7%		
	Dem:	14,948,791	39.3		
	Lab:	3,816,242	10.0		
1968—Nixon (R)	Total:	$56,397,261		73,212,000	77 ¢
	Rep:	29,592,832	52.5%		
	Dem:	12,577,715	22.3		
	Lab:	7,241,259	12.8		
	**AIP:	6,985,455	12.4		

The above figures are the best available summaries of general election campaign spending reported by national-level committees of the Republican, Democratic and major third party groups since 1912, plus labor organization spending since 1948. It should be noted that the figures provide only the roughest guide of spending. Accounting methods of political committees have varied drastically over the years. In some cases, fund transfers from committee to committee have been counted: and in others, they have not. And some figures include totals of local political groups.

In all cases, funds listed here represent only a fraction of total spending. For example, the figures do not include reports of all national-level committees of Congressional candidates or on primary and state level campaigns.

†Figures represent total spending divided by the number of votes cast. The actual cost-per-vote figures are higher since the spending figures are not complete.

**States Rights Party*

***George C. Wallace's American Independent party.*

SOURCES: Citizens' Research Foundation, Governmental Affairs Institute, *The Two Party System in the U.S.* by William Goodman

[54]

90. The following chart reflects the gross national product for the years 1929 to 1973.

STATISTICAL ABSTRACT OF THE UNITED STATES, 1974

Gross National Product 373

No. 598. Gross National Product—Summary: 1929 to 1973

[In billions of dollars. Prior to 1960, excludes Alaska and Hawaii. For definition of gross national product, see text, p. 371]

ITEM	1929	1930	1933	1935	1940	1945	1950	1955
Gross national product	103.1	90.4	55.6	72.2	99.7	211.9	284.8	398.0
By type of expenditure:								
Personal consumption expenditures	77.2	69.9	45.8	55.7	70.8	119.7	191.0	264.4
Gross private domestic investment	16.2	10.3	1.4	6.4	13.1	10.6	54.1	67.4
Net exports of goods and services	1.1	1.0	.4	.1	1.7	−.6	1.8	2.0
Govt. purchases of goods and services	8.5	9.2	8.0	10.0	14.0	82.3	37.9	74.2
By major type of product:								
Goods output	56.1	46.9	27.0	39.9	56.0	128.9	162.4	216.4
Services	35.6	34.2	25.7	28.3	35.4	76.5	87.0	132.6
Structures	11.4	9.2	2.9	4.0	8.3	6.5	35.4	49.0
By sector:								
Business	98.1	82.4	48.9	64.1	89.1	172.3	256.3	352.9
Households and institutions	2.9	2.7	1.7	1.9	2.4	4.1	6.4	9.1
Rest of the world	.8	.7	.3	.4	.4	.4	1.2	1.8
General government	4.3	4.5	4.7	5.9	7.8	35.2	20.9	34.2

ITEM	1960	1965	1968	1969	1970	1971	1972	1973 (prel.)
Gross national product	503.7	684.9	864.2	930.3	977.1	1,055.5	1,155.2	1,289.1
By type of expenditure:								
Personal consumption expenditures	325.2	432.8	536.2	579.5	617.6	667.2	726.5	804.0
Gross private domestic investment	74.8	108.1	126.0	129.0	136.3	153.2	178.3	202.1
Net exports of goods and services	4.0	6.9	2.5	1.9	3.6	.8	−4.6	5.8
Govt. purchases of goods and services	99.6	137.0	199.6	210.0	219.5	234.3	255.0	277.1
By major type of product:								
Goods output	259.6	347.2	429.5	457.5	471.2	497.1	541.4	614.7
Services	187.3	262.9	346.6	377.9	410.3	447.4	487.3	534.5
Structures	56.8	74.8	88.1	94.9	95.6	110.9	126.5	139.9
By sector:								
Business	440.7	594.4	739.0	794.1	827.0	889.9	975.4	1,090.9
Households and institutions	13.2	18.5	25.5	28.1	30.8	33.5	36.8	41.1
Rest of the world	2.4	4.2	4.7	4.3	4.6	7.0	7.5	9.6
General government	47.5	67.8	94.9	103.8	114.7	125.1	135.4	147.5

[55]

91. The number of states holding primary elections for federal office has increased from 15 to 30 since 1968. There has also been an increase in the number of local caucus meetings used to select candidates for federal offices and delegates to national nominating conventions; and the expenses of major party regulation of selection procedures for delegates to national nominating conventions has increased.

92. $400 million is less than the amount spent in 1972 by the two largest commercial advertisers in the United States. It is one half the cost of one Trident submarine.

93. It has been estimated that $400,000,000 was spent in 1972 for all elective and party politics in the United States at all political levels, in campaigns for nomination and for election. This represents a 33 percent increase from 1968. It represents an increase of almost 300 percent since 1952.

94. In the congressional and senatorial races, spending rose 10 percent between 1962 and 1964, 36 percent between 1964 and 1966, 35 percent between 1966 and 1968, and 48 percent between 1968 and 1970.

[56]

95. In the Presidential races, spending rose 40 percent between 1960 and 1964 and 46 percent between 1964 and 1968.

96. Total budgetary outlays for the United States government in fiscal year 1974 were $268,400,000,000. Estimated total outlays for 1975 are $313,400,000,000, and for 1976 are $349,400,000,000. The "net impact" (defined as the net amount of interest to be paid from receipts or other means of financing) in interest on the national debt for 1974 was $16,640,000,000. The estimated

"net impact" for 1975 is $17,863,000,000 and for 1976 it is $20,014,000,000. The requested appropriations for Civil Works projects for the Army Corps of Engineers for 1976 is $1,946,000,000, an increase of $240 million from fiscal 1975.

97. Candidates for federal elective office, political committees, and political parties employed private campaign contributions to finance their election campaigns. To the extent they spent more, they also solicited and received more.

98. In 1972, Nixon's Finance Committee determined that it was not possible to raise $40 million

by local group fund raising programs aimed at corporation employees, associations, state committees, store front offices, and womens clubs. The 1972 Nixon Reelection Committee focused its efforts on a fund raising effort directed to people that had means to contribute substantial sums. The 1972 Nixon Finance Committee received $100,000 or more from 75 individuals.

99. Parties may encounter difficulties in raising adequate funds at the proper time.

100. 90 percent of the money contributed to candidates for federal elective offices or to political committees and political parties to finance campaigns comes from 1 percent of the people.

101. The following charts reflect Labor contributions to federal candidates in the 1972 elections.

Top Recipients

Listed below are candidates for the presidency, Senate and House receiving the largest campaign financial support to date in each category from organized labor interests checked by Congressional Quarterly. Also shown are total contributions reported by the groups for each candidate.

Presidential Campaigns ($693,303)

Sen. George McGovern (D S.D.) [1]	$577,200
Sen. Hubert H. Humphrey (D Minn.)	80,558
Sen. Edmund S. Muskie (D Maine)	30,795

Senate Campaigns ($434,728)

Rep. David Pryor (D Ark.)—McClellan seat [2]	$ 42,199
Rep. James Abourezk (D S.D.)—Mundt seat	29,500
Rep. Ed Edmondson (D Okla.)—Harris seat	26,500
Sen. Claiborne Pell (D R.I.) [3]	26,100
Sen. Lee Metcalf (D Mont.)	25,499
Byron Johnson (D Idaho)—Jordan seat [2]	24,930
Ralph W. Yarborough (D Texas)—Tower seat [2]	23,850
Sen. Walter E. Mondale (D Minn.) [3]	23,000
Wayne Morse (D Ore.)—Hatfield seat	20,500

House Campaigns ($494,590)

Rep. Peter W. Rodino Jr. (D N.J.)	$ 19,300
Rep. Ray J. Madden (D Ind.)	17,700
Rep. Dominick V. Daniels (D N.J.) [3]	10,750
Rep. William R. Anderson (D Tenn.)	10,500
Rep. John J. Rooney (D N.Y.)	10,000
Arnold Olsen (D Mont.)	8,400
Rep. Andrew Jacobs Jr. (D Ind.)	7,500
Edward V. Williams (D Idaho)	7,500
Rep. Frank Thompson Jr. (D N.J.) [3]	7,000
Werner H. Fornos (D Md.)	7,000

1 Includes $380,000 in outstanding loans.
2 Defeated in primary election.
3 Member of Senate Labor or House Education and Labor Committee.

Union Political Contributions

Listed below are campaign contribution totals for presidential, Senate and House candidates based on reports filed Sept. 10 or later by political committees of labor organizations. Not included are groups overtly founded on political partisanship or on the promotion of a particular party or candidate. The listing is not comprehensive, although an effort has

been made to include the most active groups and a sampling of others. Groups listed are identified in the accompanying detailed list.

Labor Organization	Presidential	Senate	House
AFL-CIO (COPE)	None	$139,450	$187,500
AFL-CIO (Bldg-Con)	None	1,000	800
AFL-CIO (IUD)	None	4,000	5,000
Auto Workers (CGG)	$ 47,750	16,000	None
Auto Workers (VF)	249,095	21,428	36,000
Carpenters (COPE)	None	None	None
Carpenters (CLIC)	None	18,250	42,200
Clothing Workers (COPE)	None	1,000	1,400
Clothing Workers (APEC)	25,000	13,000	None
Communications Workers	132,000	7,750	None
Electrical (IBEW)	None	10,500	500
Electrical (IUE)	None	200	2,400
Fire Fighters	None	1,800	1,800
Garment Workers	15,750	33,800	2,000
Laborers	None	13,000	43,500
Machinists (MNPL)	130,375	15,000	25,450
Maintenance of Way	None	4,400	2,150
Marine Engineers	1,500	None	8,000
Oil, Chemical	28,900	1,200	3,050
Painters	1,000	None	1,350
Postal Workers	None	600	500
Public Employees	3,450	3,000	5,000
Railway Clerks	1,500	33,000	6,000
Retail Clerks	10,000	6,000	2,000
Seafarers	7,250	11,500	26,000
Service Employees	1,000	1,300	2,500
Sheet Metal	None	5,000	4,000
Steel Workers	32,433	24,200	27,000
Teachers (AFT)	None	550	1,100
Teachers (UFT)	None	None	3,390
Teamsters	1,000	29,500	35,000
Transport Workers	None	None	1,000
Transportation	5,300	18,300	18,000
Totals	$693,303	$434,728	$494,590

Campaign Donations by Labor Groups

AFL-CIO. The political arm of the 13.5-million-member American Federation of Labor-Congress of Industrial Organizations is its Committee on Political Education (COPE). COPE, in Sept. 10 reports covering 1972 through Sept. 7, listed total receipts of $678,525.71, expenditures of $515,909.20 and cash on hand of $184,598.24. Its upper level contributions, with dates, include:

James Abourezk (D S.D., Senate)	$ 5,000	7/28
	5,000	8/29
Subtotal	10,000	

Joseph R. Biden Jr. (D Del., Senate)	5,000	8/14
Terry M. Carpenter (D Neb., Senate)	5,000	6/5
Jack Daniels (D N.M., Senate)	5,000	8/29
William E. "Bud" Davis (D Idaho, Senate)	5,000	8/29
Ed Edmondson (D Okla., Senate)	5,000	5/30
	3,000	7/24
	5,000	8/29
Subtotal	13,000	
David H. Gambrell (D Ga., Senate)	4,950	8/2
William D. Hathaway (D Maine, Senate)	5,000	8/22
	5,000	8/29
Subtotal	10,000	
Byron Johnson (D Idaho, Senate)	5,000	5/10
	3,000	6/19
Subtotal	8,000	
Lee Metcalf (D Mont., Senate)	5,000	6/23
	5,000	8/29
Subtotal	10,000	
Walter F. Mondale (D Minn., Senate)	5,000	7/28
Wayne Morse (D Ore., Senate)	10,000	6/16
David L. Norvell (D N.M., Senate)	3,500	5/5
Claiborne Pell (D R.I., Senate)	5,000	7/20
	5,000	8/22
Subtotal	10,000	
David Pryor (D Ark., Senate)	5,000	5/2
Roman C. Pucinski (D Ill., Senate)	5,000	7/28
Jennings Randolph (D W.Va., Senate)	5,000	7/7
Harold Barefoot Sanders (D Texas, Senate)	5,000	8/14
Ralph W. Yarborough (D Texas, Senate)	5,000	5/18
Democratic Senatorial Campaign Committee	10,000	9/5
Michael Alarid (D N.M., House)	2,000	5/5
William R. Anderson (D Tenn., House)	5,000	5/22
Wayne N. Aspinall (D Colo., House)	2,000	8/14
Stanley W. Beetham (D Ill., House)	2,000	8/22
Darrel E. Berg (D Neb., House)	2,000	9/1
Mario Biaggi (D N.Y., House)	2,000	5/5
James H. Bilbray (D Nev., House)	2,500	8/22
Armand J. Brinkhaus (D La., House)	2,000	8/11
Charles S. Broomfield (D Mo., House)	2,000	7/7
Kenneth A. Burkhart (D Ky., House)	2,000	5/2
Patrick L. Cooney (D Neb., House)	2,000	9/1
Daniel S. Cooper (D Mich., House)	2,000	7/27
William A. (Bill) Creech (D N.C., House)	2,000	5/3
Dominick V. Daniels (D N.J., House)	2,000	5/3

John W. Davis (D Ga., House)	2,000	8/2
Mendel J. Davis (D S.C., House)	2,000	5/22
Frank E. Denholm (D S.D., House)	3,000	8/14
	2,000	8/29
Subtotal	5,000	

John D. Dingell (D Mich., House)	2,000	7/27
Ben Erdreich (D Ala., House)	2,000	6/22
William D. Ford (D Mich., House)	2,000	7/27
Werner H. Fornos (D Md., House)	2,000	5/4
	3,000	8/11
Subtotal	5,000	
Eugene Gallegos (D N.M., House)	2,500	8/29
Bo Ginn (D Ga., House)	1,000	8/16
Norma B. Handloff (D Del., House)	2,500	8/14
Julia Butler Hansen (D Wash., House)	2,500	9/1
John Hempelmann (D Wash., House)	2,500	9/1
John J. Houlihan (D Ill., House)	2,000	8/22
Andrew Jacobs Jr. (D Ind., House)	2,500	8/18
John W. Jenrette Jr. (D S.C., House)	2,000	5/25
	2,000	9/6
Subtotal	4,000	
Lawrence E. Johnson (D Ill., House)	2,000	7/28
James R. Jones (D Okla., House)	2,000	8/29
J. E. Jumonville (D La., House)	3,000	8/11
Phillip E. King Sr. (D Ky., House)	2,000	5/2
Howard N. Lee (D N.C., House)	2,000	5/3
Gillis W. Long (D La., House)	2,000	8/11
Mike McCormack (D Wash., House)	2,500	9/1
K. Gunn McKay (D Utah, House)	2,500	9/1
Pat McKeever (D S.D., House)	2,000	7/28
	3,000	8/29
Subtotal	5,000	
Mike McKool (D Texas, House)	2,000	5/18
Clem McSpadden (D Okla., House)	2,000	8/29
Lloyd Meeds (D Wash., House)	2,500	9/1
John Melcher (D Mont., House)	2,000	7/21
Edward Mezvinsky (D Iowa, House)	2,500	8/22
Abner J. Mikva (D Ill., House)	2,000	7/28
Harold O. Miller (D Va., House)	2,000	5/1
Parren J. Mitchell (D Md., House)	2,000	5/4
Lucien N. Nedzi (D Mich., House)	2,000	7/27
James G. O'Hara (D Mich., House)	2,500	7/27

Arnold Olsen (D Mont., House)	2,000	6/20
	2,000	7/21
Subtotal	4,000	
George T. Oubre (D La., House)	2,000	8/11
Wayne Owens (D Utah, House)	3,000	5/22
Bertram L. Podell (D N.Y., House)	2,000	5/3
Charles O. Porter (D Ore., House)	2,500	8/14
Graham Purcell (D Texas, House)	2,000	8/14
Ben C. Reeves (D Ala., House)	2,000	6/29
Peter W. Rodino Jr. (D N.J., House)	5,000	5/3
	5,000	5/17
	3,000	6/19
Subtotal	13,000	
Teno Roncalio (D Wyo., House)	2,500	9/5
Charles Rose (D N.C., House)	2,000	5/3
J. Edward Roush (D Ind., House)	2,500	8/18
Harold Runnels (D N.M., House)	2,500	8/29
Paul S. Sarbanes (D Md., House)	2,000	5/4
Philip R. Sharp (D Ind., House)	2,500	8/18
George E. Shipley (D Ill., House)	2,000	7/28
Marvin R. Stempien (D Mich., House)	2,000	7/27
James W. Symington (D Mo., House)	2,500	8/29
Lyle Taylor (D Iowa, House)	2,000	8/22
Frank Thompson Jr. (D N.J., House)	2,500	7/24
Mike Vinich (D Wyo., House)	2,500	9/5
Ed V. Williams (D Idaho, House)	2,000	5/10
	3,000	8/29
Subtotal	5,000	
Charles Wilson (D Texas, House)	2,000	8/14
Andrew Young (D Ga., House)	2,000	7/25
Democratic Congressional Campaign Committee	5,000	9/5

AFL-CIO. The Political Education Fund of the AFL-CIO's Building and Construction Trades Department reported as of Sept. 7 no receipts, expenditures of $16,500 and cash on hand of $4,503.12. Contributions and dates include:

Clifford P. Case (R N.J., Senate)	$ 1,000	6/13
William R. Anderson (D Tenn., House)	500	5/15
John Brademas (D Ind., House)	300	5/15

AFL-CIO. The Industrial Union Department Voluntary Fund (IUD-VF) of the AFL-CIO's Industrial Union Department reported as of Sept. 5 receipts of $15,052.23, expenditures of $12,608.53 and cash on hand of $5,369.19. Contributions include:

James Abourezk (D S.D., Senate)	$ 500	7/16
Richard Clark (D Iowa, Senate)	500	6/14
	500	7/21
Subtotal	1,000	
Walter F. Mondale (D Minn., Senate)	500	6/23
Wayne Morse (D Ore., Senate)	1,000	6/14
David Pryor (D Ark., Senate)	500	5/5
	1,000	6/5
Subtotal	1,500	
William R. Anderson (D Tenn., House)	500	5/5
Bob Bergland (D Minn., House)	500	7/16
Dominick V. Daniels (D N.J., House)	1,000	5/5
Ben Erdreich (D Ala., House)	500	6/22
Abner J. Mikva (D Ill., House)	500	6/5
Wayne Owens (D Utah, House)	500	7/25
Ogden R. Reid (D N.Y., House)	500	9/5
Peter W. Rodino Jr. (D N.J., House)	500	5/5
	500	5/12
Subtotal	1,000	
Charles A. Vanik (D Ohio, House)	500	8/14
Democratic Telethon	500	6/30

Auto Workers. The Committee for Good Government of the United Auto Workers handles funds donated by staff members of the 1,485,609-member union. The agency reported as of Aug. 31 total receipts of $27,244.55, ex-

penditures of $88,148.93 and cash on hand of $75,985.86. The top contributions:

George McGovern (D, President)	$ 2,000	6/2
	45,000	8/21
	(outstanding loan)	
Subtotal	47,000	
Edmund S. Muskie (D, President)	750	5/12
James D. Abourezk (D S.D., Senate)	4,000	5/12
Byron Johnson (D Idaho, Senate)	6,000	5/12
	6,000	6/23
Subtotal	12,000	

Auto Workers. The Voluntary Community Action Program of the United Auto Workers reported as of Aug. 31 total receipts of $47,007.83, expenditures of $373,874.16 and cash on hand of $330,173.32. Top contributions:

Hubert H. Humphrey (D, President)	$ 1,000	6/23
George McGovern (D, President)	100	7/25
	1,000	8/17
	75,000	8/18
	400	8/21
Loan bal.	135,000	8/21
Subtotal	211,500	
Edmund S. Muskie (D, President)	500	4/7
	100	4/11
	1,000	4/13
	24,995	4/14
Subtotal	26,595	
Ray Blanton (D, Tenn., Senate)	1,000	8/3
Richard Clark (D Iowa, Senate)	3,000	6/8
	1,000	8/18
	500	8/31
Subtotal	4,500	
John Bolt Culbertson (D S.C., Senate)	1,000	6/19
William D. Hathaway (D Maine, Senate)	2,500	6/8
Byron Johnson (D Idaho, Senate)	1,430	7/6
Jed Johnson (D Okla., Senate)	1,000	8/18
Frank J. Kelley (D Mich., Senate)	1,000	6/23
Lee Metcalf (D Mont., Senate)	2,999	6/8
Claiborne Pell (D R.I., Senate)	1,000	8/11
Charles H. Percy (R Ill., Senate)	3,100	6/23
David Pryor (D Ark., Senate)	(adv.) 4,999	6/8
William R. Anderson (D Tenn., House)	1,000	8/3
Frank Annunzio (D Ill., House)	500	8/11
Roger Boas (D Calif., House)	500	6/8
John Breckinridge (D Ky., House)	1,000	4/17
Charles S. Broomfield (D Mo., House)	500	8/9
George E. Brown Jr. (D Calif., House)	500	6/8
Yvonne B. Burke (D Calif., House)	500	6/8
Phillip Burton (D Calif., House)	500	6/8
George W. Collins (D Ill., House)	500	6/8
Mendel J. Davis (D S.C., House)	1,000	8/2
Al E. Engel (D Okla., House)	500	8/14
Werner H. Fornos (D Md., House)	500	4/18
Richard Fulton (D Tenn., House)	1,000	8/7
Bo Ginn (D Ga., House)	1,500	8/21

James W. Goodrich (D Ohio, House)	500	8/3
Andrew Jacobs Jr. (D Ind., House)	1,000	4/17
	2,500	8/8
Subtotal	3,500	
James R. Jones (D Okla., House)	500	8/18
Dennis J. Kucinich (D Ohio, House)	1,000	7/6
Allard K. Lowenstein (D N.Y., House)	500	6/8
	500	6/16
Subtotal	1,000	
Ray J. Madden (D Ind., House)	3,000	4/17
Ralph H. Metcalfe (D Ill., House)	500	6/8
Edward Mezvinsky (D Iowa, House)	500	8/7
	500	8/16
Subtotal	1,000	
Abner J. Mikva (D Ill., House)	500	8/11
Lucien N. Nedzi (D Mich., House)	4,000	8/1
James G. O'Hara (D Mich., House)	500	8/5
Donald W. Riegle Jr. (R Mich., House)	1,000	6/9
J. Edward Roush (D Ind., House)	2,500	8/21
James D. Ruppert (D Ohio, House)	1,000	7/26
Leo J. Ryan (D Calif., House)	500	6/8
William F. Ryan (D N.Y., House)	500	8/11
Paul S. Sarbanes (D Md., House)	500	4/18
Neal Smith (D Iowa House)	500	8/18
Marvin R. Stempien (D Mich., House)	1,000	8/1
Gerry E. Studds (D Mass., House)	500	8/11
Gabriel Talarico (D Tenn., House)	500	8/3
Charles H. Wilson (D Calif., House)	500	6/8
Andrew Young (D Ga., House)	1,000	8/3
Democratic Study Group	4,999	6/8

Carpenters. The 820,000-member United Brotherhood of Carpenters & Joiners of America, AFL-CIO, handles some political funds through the Carpenters Committee on Political Action. The committee reported no contributions through Aug. 31, receipts of $10,130, expenditures of $2,121.35 and cash on hand of $11,290.87.

Carpenters. The Carpenters Legislative Improvement Committee of the United Brotherhood of Carpenters & Joiners of America, AFL-CIO, reported through Sept. 5 receipts of $55,256.70, expenditures of $63,822.19 and cash on hand of $34,255.96. Leading contributions:

James Abourezk (D S.D., Senate)	$ 1,000	6/22
	500	9/5
Subtotal	1,500	

J. Caleb Boggs (R Del., Senate)	1,000	6/21
	750	9/5
Subtotal	1,750	
Edward W. Brooke (R Mass., Senate)	1,000	6/21
Clifford P. Case (R N.J., Senate)	1,000	5/8
Ed Edmondson (D Okla., Senate)	1,000	6/22
	500	8/2
Subtotal	1,500	
David H. Gambrell (D Ga., Senate)	1,000	8/16
Lee Metcalf (D Mont., Senate)	2,000	8/2
Walter F. Mondale (D Minn., Senate)	2,000	8/2
Claiborne Pell (D R.I., Senate)	1,500	8/14

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David Pryor (D Ark., Senate)	1,000	6/2
	1,000	6/5
Subtotal	2,000	
Jennings Randolph (D W.Va., Senate)	1,000	8/14
John Sparkman (D Ala., Senate)	1,000	8/14
Ted Stevens (D Alaska, Senate)	1,000	8/2
Glenn M. Anderson (D Calif., House)	500	8/14
William R. Anderson (D Tenn., House)	500	5/8
	500	9/7
Subtotal	1,000	
Les Aspin (D Wis., House)	500	8/14
William A. Barrett (D Pa., House)	750	8/16
Nick Begich (D Alaska, House)	500	8/2
Alphonzo Bell (R Calif., House)	500	8/14
Bob Bergland (D Minn., House)	500	8/2
David R. Bowen (D Miss., House)	500	6/19
John Brademas (D Ind., House)	500	9/5
Jack Brooks (D Texas, House)	500	8/14
George E. Brown Jr. (D Calif., House)	500	8/2
Phillip Burton (D Calif., House)	500	5/8
Goodloe E. Byron (D Md., House)	300	5/16
Hugh L. Carey (D N.Y., House)	500	8/16
Charles J. Carney (D Ohio, House)	500	9/5
Frank M. Clark (D Pa., House)	500	8/16
Don H. Clausen (R Calif., House)	400	8/29
Silvio O. Conte (R Mass., House)	500	9/5
James C. Corman (D Calif., House)	500	8/14

William R. Cotter (D Conn., House)	500	8/16
Dominick V. Daniels (D N.J., House)	500	5/10
	500	6/5
Subtotal	1,000	
James J. Delaney (D N.Y., House)	500	6/9
	500	9/5
Subtotal	1,000	
John H. Dent (D Pa., House)	500	8/14
Dante B. Fascell (D Fla., House)	500	8/16
Daniel J. Flood (D Pa., House)	750	8/29
William D. Ford (D Mich., House)	750	8/2
	750	8/16
Subtotal	1,500	
Richard Fulton (D Tenn., House)	500	5/16
Robert N. Giaimo (D Conn., House)	600	8/14
Bo Ginn (D Ga., House)	500	8/16
Ella T. Grasso (D Conn., House)	500	8/16
Edith Green (D Ore., House)	500	8/2
Martha W. Griffiths (D Mich., House)	500	9/5
Gilbert Gude (R Md., House)	500	9/5
Julia Butler Hansen (D Wash., House)	500	8/2
Augustus F. Hawkins (D Calif., House)	500	8/29
Wayne L. Hays (D Ohio, House)	500	6/9
	500	8/14
Subtotal	1,000	
Louise Day Hicks (D Mass., House)	500	8/14
Frank Horton (R N.Y., House)	700	8/2
James J. Howard (D N.J., House)	500	9/5
Richard H. Ichord (D Mo., House)	500	5/8
Joseph E. Karth (D Minn., House)	600	8/4
Robert W. Kastenmeier (D Wis., House)	500	9/5
Peter N. Kyros (D Maine, House)	500	8/3
Robert L. Leggett (D Calif., House)	500	8/14
Torbert H. Macdonald (D Mass., House)	500	9/5
William S. Mailliard (R Calif., House)	400	8/29
Paul N. McCloskey Jr. (R Calif., House)	500	8/14
Mike McCormack (D Wash., House)	500	9/5
Lloyd Meeds (D Wash., House)	500	8/2
Joseph G. Minish (D N.J., House)	500	9/5
Thomas E. Morgan (D Pa., House)	700	8/14
John M. Murphy (D N.Y., House)	500	8/16
Lucien N. Nedzi (D Mich., House)	500	8/2

David R. Obey (D Wis., House)	500	8/2
James G. O'Hara (D Mich., House)	500	8/2
Claude Pepper (D Fla., House)	500	8/14
Peter A. Peyser (R N.Y., House)	500	5/12
Peter W. Rodino Jr. (D N.J., House)	700	5/10
Teno Roncalio (D Wyo., House)	500	8/17
John J. Rooney (D N.Y., House)	500	5/8
	500	6/9
Subtotal	1,000	
Fernand J. St Germain (D R.I., House)	600	8/14
George E. Shipley (D Ill., House)	500	9/5
B. F. Sisk (D Calif., House)	500	8/29
Harley O. Staggers (D W.Va., House)	500	3/8
James V. Stanton (D Ohio, House)	500	8/2
Frank Thompson Jr. (D N.J., House)	500	8/14
Jerome R. Waldie (D Calif., House)	500	8/29
Gus Yatron (D Pa., House)	500	9/5
Democratic Congressional Campaign Committee	3,700	9/5
Democratic Dinner Committee	2,000	7/10
Republican Convention Gala '72	2,000	7/19

Clothing Workers. The Amalgamated Clothing Workers of America, AFL-CIO, with 386,000 members in the Labor Department's latest listing, reported campaign financing through two agencies. The Amalgamated Clothing Workers Political Education Committee as of Aug. 31 reported total receipts of $600, expenditures of $2,600 and cash on hand of $4,345.92. Main contributions:

Edward W. Brooke (R Mass., Senate)	$ 1,000	8/21
Robert F. Drinan (D Mass., House)	300	8/12
Michael Harrington (D Mass., House)	300	8/21
Margaret M. Heckler (R Mass., House)	500	5/12
Thomas P. O'Neill Jr. (D Mass., House)	300	8/21

Clothing Workers. The Amalgamated Political Education Committee of the Amalgamated Clothing

Workers of America, AFL-CIO, as of Aug. 31 reported total receipts of $88,300.09, expenditures of $55,555.20 and cash on hand of $32,744.89. Leading contributions:

George McGovern (D, President)	$25,000	8/7

James Abourezk (D S.D., Senate)	1,000	3/8
	1,000	8/18
Subtotal	2,000	
Ray Blanton (D Tenn., Senate)	1,000	5/12
Ed Edmondson (D Okla., Senate)	1,000	8/7
William D. Hathaway (D Maine, Senate)	1,000	3/8
Frank J. Kelley (D Mich., Senate)	1,000	8/31
Wayne Morse (D Ore., Senate)	1,000	8/7
Claiborne Pell (D R.I., Senate)	1,000	3/22
	1,000	5/19
Subtotal	2,000	
David Pryor (D Ark., Senate)	3,000	5/31
Ralph W. Yarborough (D Texas, Senate)	1,000	4/4

Communications Workers. The Communications Workers of America, AFL-CIO, was listed with 421,570 members in the Labor Department's latest directory. The Communications Workers of America Committee on Political Education through Aug. 31 reported total receipts of $25,106.32, expenditures of $178,639.61 and cash on hand of $102,640.04. Leading contributions:

Hubert H. Humphrey (D, President)		$ 1,000	4/28
		5,000	5/5
		1,000	6/1
Subtotal		7,000	
George McGovern (D, President)	(adv.)	25,000	8/24
	Loan bal.	100,000	8/25
Subtotal		125,000	
David Pryor (D Ark., Senate)		1,000	5/4
Ralph W. Yarborough (D Texas, Senate)		6,750	4/15

Electrical Workers. The International Brotherhood of Electrical Workers, AFL-CIO, was put at 921,722 members in the Labor Department's 1971 directory. The International Brotherhood of Electrical Workers Committee on Political Education through Aug. 31 reported total receipts of $63,192.91, expenditures of $51,626 and cash on hand of $41,569.23. Major contributions:

James Abourezk (D S.D., Senate)	$ 500	8/30
J. Caleb Boggs (R Del., Senate)	500	4/4
Richard Clark (D Iowa, Senate)	500	4/4
	500	7/24
Subtotal	1,000	
Ed Edmondson (D Okla., Senate)	500	7/24
David H. Gambrell (D Ga., Senate)	500	8/4
Eugene Guess (D Alaska, Senate)	500	8/4

William D. Hathaway (D Maine, Senate)	500	8/30
Frank J. Kelley (D Mich., Senate)	1,000	8/30
Walter F. Mondale (D Minn., Senate)	1,000	5/22
	1,000	7/25
Subtotal	2,000	
Wayne Morse (D Ore., Senate)	500	3/28
Claiborne Pell (D R.I., Senate)	500	3/7
	500	4/17
Subtotal	1,000	
David Pryor (D Ark., Senate)	500	6/2
Roman C. Pucinski (D Ill., Senate)	500	8/30
John Sparkman (D Ala., Senate)	500	3/7
Ralph W. Yarborough (D Texas, Senate)	500	3/7
Ray J. Madden (D Ind., House)	500	4/3
Nat'l Committee to Re-elect a Democratic Congress	1,000	8/30

Electrical Workers. The International Union of Electrical, Radio and Machine Workers, AFL-CIO, was listed at 300,000 members in 1971 directories. Its Committee on Political Education as of Aug. 31 reported total receipts of $17,687.73, expenditures of $13,106.67 and cash on hand of $4,387.76. Contributions included:

Edward W. Brooke (R Mass., Senate)	$ 200	1/21
Silvio O. Conte (R Mass., House)	400	2/18
Joseph G. Minish (D N.J., House)	1,000	2/15
James D. Ruppert (D Ohio, House)	1,000	8/16

Fire Fighters. The Fire Fighter Committee on Political Education, associated with the International Association of Fire Fighters, through Aug. 31 reported total receipts of $7,671, expenditures of $8,354 and cash on hand of $206.67. Contributions included:

Jack Daniels (D N.M., Senate)	$ 200	5/4
Ed Edmondson (D Okla., Senate)	300	8/30
Lee Metcalf (D Mont., Senate)	500	8/30
Walter F. Mondale (D Minn., Senate)	500	8/29
Claiborne Pell (D R.I., Senate)	300	8/30
Nick Begich (D Alaska, House)	200	8/30
Phillip Burton (D Calif., House)	200	5/15
Werner H. Fornos (D Md., House)	200	8/30
Mike McKool (D Texas, House)	200	5/18

Wayne Owens (D Utah, House)	200	7/4
Claude Pepper (D Fla., House)	300	8/30
Peter W. Rodino Jr. (D N.J., House)	200	6/5
Morris K. Udall (D Ariz., House)	300	8/30

Garment Workers. The 442,333-member International Ladies' Garment Workers Union, AFL-CIO, through Aug. 31, reported total receipts of $1,128,048.06, expenditures of $210,379.17 and cash on hand of $917,668.89. Top contributions:

Hubert H. Humphrey (D, President)	$ 5,000	4/9
	1,250	5/8
	3,500	5/15
	5,000	5/15
	1,000	8/30
Subtotal	15,750	
James Abourezk (D S.D., Senate)	1,500	8/23
Joseph R. Biden Jr. (D Del., Senate)	1,000	8/23

Ray Blanton (D Tenn., Senate)	1,500	8/23
Richard Clark (D Iowa, Senate)	1,500	8/23
Jack Daniels (D N.M., Senate)	1,500	8/23
William E. "Bud" Davis (D Idaho, Senate)	1,500	8/23
Ed Edmondson (D Okla., Senate)	1,500	8/28
Walter (Dee) Huddleston (D Ky., Senate)	1,500	8/23
Frank J. Kelley (D Mich., Senate)	2,000	8/23
Lee Metcalf (D Mont., Senate)	500	5/5
	2,000	8/23
Subtotal	2,500	
Walter F. Mondale (D Minn., Senate)	2,000	8/11
	1,000	8/23
Subtotal	3,000	
Wayne Morse (D Ore., Senate)	[illegible]	8/23
Claiborne Pell (D R.I., Senate)	800	4/26
	3,000	8/23
Subtotal	3,800	
Harold Barefoot Sanders (D Texas, Senate)	3,000	8/23
Eugene N. Zeigler (D S.C., Senate)	500	5/5
	3,000	8/23
Subtotal	3,500	
Democratic Senatorial Campaign Committee	2,500	8/23
Dominick V. Daniels (D N.J., House)	500	5/31

Peter W. Rodino Jr. (D N.J., House)	500	5/18
Gerry E. Studds (D Mass., House)	1,000	8/23

Laborers. The Laborers Political League of the 580,000-member Laborers' International Union, AFL-CIO, through Sept. 7 reported total receipts of $118,959.58, expenditures of $66,610.40 and cash on hand of $204,050.27. Leading contributions:

Richard Clark (D Iowa, Senate)	$ 1,000	6/7
	1,000	8/3
Subtotal	2,000	
Ed Edmondson (D Okla., Senate)	2,000	8/3
Nick Galifianakis (D N.C., Senate)	500	6/9
Lee Metcalf (D Mont., Senate)	2,000	8/3
Walter F. Mondale (D Minn., Senate)	2,000	8/3
Wayne M[illegible] (D Ore., Senate)	1,000	8/3
William B. Spong Jr. (D Va., Senate)	1,000	6/9
Ted Stevens (R Alaska, Senate)	1,000	8/16
Democratic Senatorial Campaign Committee	1,500	8/24
Brock Adams (D Wash., House)	500	8/3
Glenn M. Anderson (D Calif., House)	500	9/1
William R. Anderson (D Tenn., House)	500	6/9
Alphonzo Bell (R Calif., House)	500	9/1
Bob Bergland (D Minn., House)	500	8/3
Roger Boas (D Calif., House)	2,000	9/1
John Brademas (D Ind., House)	500	6/9
George E. Brown Jr. (D Calif., House)	2,000	9/1
Yvonne B. Burke (D Calif., House)	500	9/1
William (Bill) Clay (D Mo., House)	500	8/18
John Conyers Jr. (D Mich., House)	500	6/9
James C. Corman (D Calif., House)	1,000	9/1
George E. Danielson (D Calif., House)	1,000	9/1
Ronald V. Dellums (D Calif., House)	500	9/1
John H. Dent (D Pa., House)	1,000	6/6
Don Edwards (D Calif., House)	500	9/1
Joshua Eilberg (D Pa., House)	500	6/9
Dante B. Fascell (D Fla., House)	500	6/9
	1,000	8/18
Subtotal	1,500	
Sam Gibbons (D Fla., House)	1,000	8/18
James W. Goodrich (D Ohio, House)	500	8/3
Richard T. Hanna (D Calif., House)	2,000	9/1
Julia Butler Hansen (D Wash., House)	500	8/3

Augustus F. Hawkins (D Calif., House)	500	9/1
Chet Holifield (D Calif., House)	500	9/1
Frank Horton (R N.Y., House)	500	8/18
Harold T. Johnson (D Calif., House)	500	9/1
Joseph E. Karth (D Minn., House)	1,000	8/18
Robert L. Leggett (D Calif., House)	500	9/1
Ray J. Madden (D Ind., House)	500	8/3
Paul N. McCloskey Jr. (R Calif., House)	500	6/6
John J. McFall (D Calif., House)	500	9/1
K. Gunn McKay (D Utah, House)	500	6/9
John Melcher (D Mont., House)	500	8/18
Robert H. Mollohan (D W.Va., House)	500	6/9
John E. Moss (D Calif., House)	500	9/1
Edmund A. Nix (D Wis., House)	500	6/9
David R. Obey (D Wis., House)	500	8/18
Arnold Olsen (D Mont., House)	500	8/3
	500	8/18
Subtotal	1,000	
Wayne Owens (D Utah, House)	500	8/3
Claude Pepper (D Fla., House)	1,000	8/18
Otis G. Pike (D N.Y., House)	500	6/9
Richardson Preyer (D N.C., House)	500	6/9
Charles B. Rangel (D N.Y., House)	500	6/9
Thomas M. Rees (D Calif., House)	500	9/1
Robert A. Reveles (D Ariz., House)	500	9/1
John J. Rooney (D N.Y., House)	500	6/9
	500	8/3
Subtotal	1,000	
Edward R. Roybal (D Calif., House)	500	9/1
Leo J. Ryan (D Calif., House)	2,000	9/1
Paul S. Sarbanes (D Md., House)	500	6/9
B. F. Sisk (D Calif., House)	500	9/1
Neal Smith (D Iowa, House)	500	8/3
James V. Stanton (D Ohio, House)	500	6/9
Lionel Van Deerlin (D Calif., House)	500	9/1
Jerome R. Waldie (D Calif., House)	500	9/1
Lee Weissenborn (D Fla., House)	2,500	8/18
Charles H. Wilson (D Calif., House)	500	9/1
Lester L. Wolff (D N.Y., House)	500	6/9

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Democratic Congressional Campaign Committee	2,000	6/6

Machinists. The Machinists Nonpartisan Political League of the 865,490-member International Association of Machinists and Aerospace Workers, AFL-CIO, through Aug. 31 reported total receipts of $93,656.31, expenditures of $194,140.40 and cash on hand of $73,104.87. Top contributions:

Hubert H. Humphrey (D, President)		$ 375	5/9
George McGovern (D, President)		25,000	8/14
		5,000	8/16
	Loan bal.	100,000	8/30
Subtotal		130,000	
James Abourezk (D S.D., Senate)		1,000	4/19
Richard Clark (D Iowa, Senate)		1,000	5/9
		1,000	6/29
		2,000	8/16
Subtotal		4,000	
Jack Daniels (D N.M., Senate)		1,000	8/15
William D. Hathaway (D Maine, Senate)		2,000	8/15
Lee Metcalf (D Mont., Senate)		1,000	4/19
David L. Norvell (D N.M., Senate)		1,000	6/5
David Pryor (D Ark., Senate)		1,000	4/19
		2,000	6/2
Subtotal		3,000	
Roman C. Pucinski (D Ill., Senate)		1,000	4/11
Ralph W. Yarborough (D Texas, Senate)		1,000	4/11
Stanley W. Beetham (D Ill., House)		500	6/29
Nick Begich (D Alaska, House)		300	8/15
Bob Bergland (D Minn., House)		500	8/15
James H. Bilbray (D Nev., House)		500	5/9
Roger Boas (D Calif., House)		500	8/15
Charles S. Broomfield (D Mo., House)		500	5/24
George E. Brown Jr. (D Calif., House)		500	8/15
Phillip Burton (D Calif., House)		400	5/2
James A. Byrne (D Pa., House)		500	4/19
William R. Cotter (D Conn., House)		750	8/16
Dominick V. Daniels (D N.J., House)		1,000	5/24
William E. "Bud" Davis (D Idaho, House)		1,500	8/25
Robert F. Drinan (D Mass., House)		500	8/15
Werner H. Fornos (D Md., House)		300	5/2
		500	8/15
Subtotal		800	
Donald M. Fraser (D Minn., House)		750	8/15
Richard Fulton (D Tenn., House)		800	7/24
Eugene Gallegos (D N.M., House)		500	8/15
Richard T. Hanna (D Calif., House)		500	5/24

Michael Harrington (D Mass., House)	800	8/7
	500	8/15
Subtotal	1,300	
Louise Day Hicks (D Mass., House)	500	8/15
John J. Houlihan (D Ill., House)	500	6/29
Lawrence Johnson (D Ill., House)	500	6/29
Peter N. Kyros (D Maine, House)	500	8/15
Mike McKool (D Texas, House)	500	5/9
Clem McSpadden (D Okla., House)	750	8/15
Parren J. Mitchell (D Md., House)	350	5/2
Richard M. Nolan (D Minn., House)	750	8/18
Arnold Olsen (D Mont., House)	400	5/24
Peter W. Rodino Jr. (D N.J., House)	1,000	5/17
Teno Roncalio (D Wyo., House)	750	8/15
Philip R. Sharp (D Ind., House)	500	8/15
Howard B. Sompayrac Jr. (D Tenn., House)	750	8/15
Gerry E. Studds (D Mass., House)	500	8/15
Elmer H. Violette (D Maine, House)	500	8/15
Richard C. White (D Texas, House)	500	4/24
Charles H. Wilson (D Calif., House)	500	5/24
Democratic Congressional Dinner Committee	2,100	6 29
	1,000	8. 29
Subtotal	3,100	
Democratic National Committee	2,500	8/1
	2,500	8/4
	250	8/8
Subtotal	5,250	

Maintenance of Way. The Maintenance of Way Political League of the Brotherhood of Maintenance of Way Employees through Aug. 31 reported total receipts of $59,953.60, expenditures of $17,800 and cash on hand of $121,501.97. Contributions included:

Ray Blanton (D Tenn., Senate)	$ 500	8/11
Ed Edmondson (D Okla., Senate)	200	7/27
Mark O. Hatfield (R Ore., Senate)	200	5/17
Frank J. Kelley (D Mich., Senate)	3,000	8/9
Walter F. Mondale (D Minn., Senate)	500	8/29
William R. Anderson (D Tenn., House)	500	5/28
Nick Begich (D Alaska, House)	200	8/29
Goodloe E. Byron (D Md., House)	200	5/17
Joshua Eilberg (D Pa., House)	200	6/7
Donald M. Fraser (D Minn., House)	200	8/29
Wayne L. Hays (D Ohio, House)	200	6/7
Torbert H. Macdonald (D Mass., House)	200	8/14

Richard L. Ottinger (D N.Y., House)	250	8/29
William R. Roy (D Kan., House)	200	5/8

Marine Engineers. The Marine Engineers Beneficial Association Political Action Committee reported as of Sept. 7 total receipts of $140,123.75, expenditures of $68,813.37 and cash on hand of $71,310.38. A related fund called the MEBA Retirees reported as of Aug. 31 no contributions, receipts of $105,780.86, expenditures of $20,368.97 and cash on hand of $369,994.29. Contributions by MEBA-PAC included:

Spiro T. Agnew (R, Vice President)	$ 1,500	5/15
Dan Evans (R Wash., House)	1,000	8/23
John Hempelmann (D Wash., House)	2,000	8/15
John J. Rooney (D N.Y., House)	5,000	6/7

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Oil, Chemical Workers. The Oil, Chemical and Atomic Workers Committee on Political Education of the 175,324-member International Union of Oil, Chemical and Atomic Workers, AFL-CIO, as of Aug. 31 reported total receipts of $12,969.16, expenditures of $33,430.50 and cash on hand of $56,357.32. Contributions included:

Hubert H. Humphrey (D, President)	$ 200	7/3
George McGovern (D, President)	200	7/3
	3,000	8/30
	25,500	8/11
Subtotal	28,700	
Richard Clark (D Iowa, Senate)	300	6/2
David Pryor (D Ark., Senate)	300	5/2
Ralph W. Yarborough (D Texas, Senate)	300	5/16
	300	7/24
Subtotal	600	
Charles S. Broomfield (D Mo., House)	300	8/16
Dominick V. Daniels (D N.J., House)	500	6/1
Ray J. Madden (D Ind., House)	500	4/7
Mike McKool (D Texas, House)	250	5/16
George T. Oubre (D La., House)	300	8/15
Wayne Owens (D Utah, House)	500	7/18
Peter W. Rodino Jr. (D N.J., House)	400	6/9
Charles Wilson (D Texas, House)	300	8/15
Democratic National Telethon	1,200	7/5
Democratic National Committee Festival of Stars	1,000	6/29

Painters. The Political Action Together Political Committee of the 210,000-member International Brotherhood of Painters and Allied Trades, AFL-CIO, through Aug. 31 reported total receipts of $5,527.50, expenditures of $10,222.21 and cash on hand of $10,223.67. Contributions included:

Hubert H. Humphrey (D, President)	$ 500	5/22
	500	5/31
Subtotal	1,000	
John Brademas (D Ind., House)	100	5/30
Dominick V. Daniels (D N.J., House)	250	5/22
Patsy T. Mink (D Hawaii, House)	1,000	5/22

Postal Workers. The Political Fund Committee of the new American Postal Workers Union, AFL-CIO, as of Sept. 10 reported total receipts of $5,394.48, expenditures of $1,100 and cash on hand of $4,294.48. Contributions included:

Jennings Randolph (D W.Va., Senate)	$ 500	9/10
Ted Stevens (R Alaska, Senate)	100	9/10
William D. Ford (D Mich., House)	400	9/10
Lawrence J. Hogan (R Md., House)	100	9/10

Public Employees. The American Federation of State, County and Municipal Employees, AFL-CIO, was listed with 444,479 members in the Labor Department's 1971 directory. Its Public Employees Organized to Promote Legislative Equality reported as of Aug. 31 total receipts of $29,580.12, expenditures of $38,889.01 and cash on hand of $51,346.04. Top contributions:

Edmund S. Muskie (D, President)	$ 3,000	4/25
	(adv.) 450	5/4
Subtotal	3,450	
Claiborne Pell (D R.I., Senate)	1,000	8/16
David Pryor (D Ark., Senate)	1,000	4/7
	1,000	5/16
Subtotal	2,000	
Walter E. Fauntroy (D D.C., House)	1,000	4/17
	Loan 1,000	4/28
Thomas J. Manton (D N.Y., House)	1,000	6/7
Abner K. Mikva (D Ill., House)	1,000	6/7
Andrew Young (D Ga., House)	1,000	8/3
Democratic National Committee	1,000	6/7
	2,500	6/29
	4,000	8/3
Subtotal	7,500	

Railway Clerks. The Railway Clerks Political League of the 275,000-member Brotherhood of Railway, Airline and Steamship Clerks, AFL-CIO, reported as of Sept. 7 total receipts of $210,770.97, expenditures of $179,453.97 and cash on hand of $31,650.47. Leading contributions:

Hubert H. Humphrey (D, President)	$ 1,500	5/31
James Abourezk (D S.D., Senate)	1,000	by 5/15 (date obscured)
	2,000	8/3
Subtotal	3,000	
Joseph R. Biden Jr. (D Del., Senate)	1,000	8/3
Ray Blanton (D Tenn., Senate)	1,000	8/3
Edward W. Brooke (R Mass., Senate)	1,000	8/3
Clifford P. Case (R N.J., Senate)	1,000	8/3
Richard Clark (D Iowa, Senate)	1,000	8/3
Jack Daniels (D N.M., Senate)	1,000	8/14
Ed Edmondson (D Okla., Senate)	1,000	8/3
Vance Hartke (D Ind., re-elected to 6-year term in 1970)	5,000	8/3
William D. Hathaway (D Maine, Senate)	1,000	8/3
Byron Johnson (D Idaho, Senate)	1,000	5/23
Lee Metcalf (D Mont., Senate)	1,000	8/3
Walter F. Mondale (D Minn., Senate)	2,000	8/3
Robert A. Mondragon (D N.M., Senate)	1,000	5/15
Wayne Morse (D Ore., Senate)	1,000	8/3
David L. Norvell (D N.M., Senate)	1,000	5/24
	1,000	6/1
Subtotal	2,000	
James B. Pearson (R Kan., Senate)	1,000	8/3
Claiborne Pell (D R.I., Senate)	1,000	8/3
David Pryor (D Ark., Senate)	1,000	6/5
	1,000	before 5/15 (date obscured)
Subtotal	2,000	
Roman C. Pucinski (D Ill., Senate)	1,000	8/3

John Sparkman (D Ala., Senate)	1,000	8/3
William B. Spong Jr. (D Va., Senate)	1,000	8/3
Ted Stevens (R Alaska, Senate)	1,000	8/3
Democratic Senatorial Campaign Committee	1,000	8/3
Frank Annunzio (D Ill., House)	1,000	7/24
Stanley W. Beetham (D Ill., House)	1,000	7/28

John J. Houlihan (D Ill., House)	1,000	8/14
Abner J. Mikva (D Ill., House)	1,000	5/31
W. S. (Bill) Stuckey (D Ga., House)	1,000	5/24
Republican Congressional Booster Club	1,000	7/24
Democratic National Committee Festival of Stars	1,000	7/6

Retail Clerks. The Active Ballot Club of the 605,202-member Retail Clerks International Union, AFL-CIO, as of Aug. 31 reported total receipts of $129,181.18, expenditures of $50,280.12 and cash on hand of $219,-459.11. Contributions included:

Hubert H. Humphrey (D, President)	$10,000	5/24
David Pryor (D Ark., Senate)	2,000	4/25
	2,000	6/5
Subtotal	4,000	
Ralph W. Yarborough (D Texas, Senate)	2,000	5/24
Michael Galasso (D Ill., House)	1,000	7/31
Ray J. Madden (D Ind., House)	1,000	4/7

Seafarers. The Seafarers Political Action Donation of the 80,250-member Seafarers International Union, AFL-CIO, reported as of Aug. 31 total receipts of $143,-705.82, expenditures of $91,217.62 and cash on hand of $52,488.20. Contributions included:

Hubert H. Humphrey (D, President)	$ 5,000	6/2
Wilbur D. Mills (D, President)	250	6/12
	2,000	7/7
Subtotal	2,250	
Ray Blanton (D Tenn., Senate)	1,500	6/21
Allen J. Ellender (D La., Senate)	10,000	7/18
Joseph P. Addabbo (D N.Y., House)	1,000	5/19
Phillip Burton (D Calif., House)	500	by 5/15 (date obscured)
Hugh L. Carey (D N.Y., House)	2,000	6/2
Emanuel Celler (D N.Y., House)	3,000	4/21
Dominick V. Daniels (D N.J., House)	1,000	5/12
James J. Delaney (D N.Y., House)	2,000	5/1
Thomas N. Downing (D Va., House)	2,000	6/2
Joshua Eilberg (D Pa., House)	500	6/1
Werner H. Fornos (D Md., House)	500	5/1
Gillis W. Long (D La., House)	2,000	7/10
Abner J. Mikva (D Ill., House)	500	6/12

Richard L. Ottinger (D N.Y., House)	500	5/1
Thomas P. O'Neill Jr. (D Mass., House)	2,500	6/1
Otis G. Pike (D N.Y., House)	500	5/5
Charles B. Rangel (D N.Y., House)	500	6/2
Peter W. Rodino Jr. (D N.J., House)	1,000	5/5
John J. Rooney (D N.Y., House)	3,000	4/21
William F. Ryan (D N.Y., House)	500	5/1
Paul S. Sarbanes (D Md., House)	500	6/21
James V. Stanton (D Ohio, House)	500	6/1
Lester L. Wolff (D N.Y., House)	500	5/19
Democratic Congressional Dinner Committee	1,000	7/17

Service Employees. The Service Employees International Union Committee on Political Education Political Contributions Committee of the 435,000-member Service Employees International Union, AFL-CIO, reported as of Aug. 31 total receipts of $24,948.41, expenditures of $13,540 and cash on hand of $14,258.41. Contributions included:

Hubert H. Humphrey (D, President)	$ 1,000	5/31
James Abourezk (D S.D., Senate)	500	7/20
Richard Clark (D Iowa, Senate)	300	5/17
Claiborne Pell (D R.I., Senate)	500	4/19
Dominick V. Daniels (D N.J., House)	500	5/30
Abner J. Mikva (D Ill., House)	500	6/20
James G. O'Hara (D Mich., House)	500	7/20
Thomas P. O'Neill Jr. (D Mass., House)	500	6/9
Frank Thompson Jr. (D N.J., House)	500	8/31

Sheet Metal Workers. The Political Action League of the Sheet Metal Workers International Association as of Aug. 31 reported total receipts of $43,735.09, expenditures of $21,599.97 and cash on hand of $33,943.54. Contributions included:

Clifford P. Case (R N.J., Senate)	$ 1,000	4/18
J. Caleb Boggs (R Del., Senate)	1,000	4/18
David H. Gambrell (D Ga., Senate)	1,000	8/16
Wayne Morse (D Ore., Senate)	1,000	5/15
Claiborne Pell (D R.I., Senate)	1,000	5/25
Phillip Burton (D Calif., House)	1,000	4/18
Ray J. Madden (D Ind., House)	1,000	4/19
Patsy T. Mink (D Hawaii, House)	1,000	4/18

Claude Pepper (D Fla., House)	1,000	4/17

Steel Workers. The United Steel Workers of America, listed at 1,200,000 members in the U.S. Department of Labor's 1971 union directory, is the largest AFL-CIO union. The United Steel Workers of America Political Action Committee reported through Aug. 31 total receipts of $145,898, expenditures of $146,978.99 and cash on hand of $208,604.80. Top contributions:

Hubert H. Humphrey (D, President)		$ 5,000	4/10
	(Flyers)	7,420	4/14
		16,000	4/20
	(Leaflets)	1,013.25	4/21
		3,000	4/24
Subtotal		32,433.25	

James Abourezk (D S.D., Senate)	2,500	7/6
Richard Clark (D Iowa, Senate)	1,200	8/1
Ed Edmondson (D Okla., Senate)	1,000	7/10
Byron Johnson (D Idaho, Senate)	2,500	7/6
Lee Metcalf (D Mont., Senate)	2,500	7/6
Walter F. Mondale (D Minn., Senate)	2,500	7/6
David L. Norvell (D N.M., Senate)	1,000	5/23
	3,000	8/1
Subtotal	4,000	
Claiborne Pell (D R.I., Senate)	2,500	7/6
David Pryor (D Ark., Senate)	1,000	5/25
	4,500	6/5
Subtotal	5,500	
William R. Anderson (D Tenn., House)	500	5/23
	500	6/26
Subtotal	1,000	
Dominick V. Daniels (D N.J., House)	1,000	5/23
Frank E. Evans (D Colo., House)	500	6/6
	500	7/6
	500	8/4
Subtotal	1,500	
Richard Fulton (D Tenn., House)	1,000	6/26
Andrew Jacobs Jr. (D Ind., House)	500	6/6
	500	7/6
	500	8/4
Subtotal	1,500	
James R. Jones (D Okla., House)	500	7/10
Dennis J. Kucinich (D Ohio, House)	1,500	8/21
Ray J. Madden (D Ind., House)	5,000	4/19
	500	6/26
Subtotal	5,500	

Richard Max McCarthy (D N.Y., House)	1,000	8/17
Clem McSpadden (D Okla., House)	500	8/14
Arnold Olsen (D Mont., House)	2,500	8/14
Wayne Owens (D Utah, House)	500	6/6
	500	7/6
	500	8/4
Subtotal	1,500	
Claude Pepper (D Fla., House)	1,000	8/17
Peter W. Rodino Jr. (D Ind., House)	500	5/23
James D. Ruppert (D Ohio, House)	1,000	8/21
Philip R. Sharp (D Ind., House)	1,000	8/21
Frank Thompson Jr. (D N.J., House)	500	6/6
	500	7/6
	500	8/4
Subtotal	1,500	
Ray Thornton (D Ark., House)	500	5/25
Ed V. Williams (D Idaho, House)	500	6/6
	500	7/6
	500	8/4
Subtotal	1,500	
Andrew Young (D Ga., House)	1,000	8/23
Democratic National Committee Festival of Stars	1,500	6/13
	2,500	6/29
Subtotal	4,000	
Democratic Telethon	1,500	6/27

Teachers. The Committee on Political Education of the American Federation of Teachers, AFL-CIO, reported as of Aug. 31 total receipts of $17,240.94, expenditures of $3,555.68 and cash on hand of $14,578.65. Contributions included:

Richard Clark (D Iowa, Senate)	$ 150	8/15
David Pryor (D Ark., Senate)	200	4/27
	200	6/6
Subtotal	400	
John Brademas (D Ind., House)	200	5/3
Phillip Burton (D Calif., House)	200	4/27
Ray J. Madden (D Ind., House)	200	4/27
Joseph G. Minish (D N.J., House)	500	3/15
Democratic National Committee	570	6/12

Teachers. The Committee on Political Education of the United Federation of Teachers, AFL-CIO, as of Aug. 31 reported total receipts of $236,984.56, expendi-

tures of $48,717.36 and cash on hand of $188,267.20. Contributions included:

		All dates between 6/8 and 8/31 (dates obscured)
Herman Badillo (D N.Y., House) (Mailing labels)	452	
Frank J. Brasco (D N.Y., House) (Mailing labels)	678	
Bertram L. Podell (D N.Y., House) (Mailing labels)	452	
James H. Scheuer (D N.Y., House) (Mailing labels)	1,808	

Teamsters. The independent International Brotherhood of Teamsters, with 1,777,520 members listed in the U.S. Labor Department's 1971 directory, is the nation's largest union. Its political arm, the Democratic, Republican and Independent Voter Education Committee (DRIVE), in reports covering through Sept. 6 listed total receipts of $56,023.54, expenditures of $97,013.76 and cash on hand of $19,620.17. Top contributions:

Richard M. Nixon (R, President)	$ 1,000	6/7
James Abourezk (D S.D., Senate)	1,000	5/12
	1,000	8/22
Subtotal	2,000	
Richard Clark (D Iowa, Senate)	1,000	7/6
Ed Edmondson (D Okla., Senate)	3,500	8/22
Mark O. Hatfield (R Ore., Senate)	1,000	5/17
Frank J. Kelley (D Mich., Senate)	5,000	8/22
Walter F. Mondale (D Minn., Senate)	1,000	4/25
	1,000	8/22
Subtotal	2,000	
Wayne Morse (D Ore., Senate)	3,000	5/10
David Pryor (D Ark., Senate)	5,000	5/16
Jennings Randolph (D W.Va., Senate)	1,000	8/22
Ted Stevens (R Alaska, Senate)	1,000	8/22
Ralph W. Yarborough (D Texas, Senate)	5,000	6/15
Nick Begich (D Alaska, House)	1,000	8/25

James H. Bilbray (D Nev., House)	1,000	8/4
Roger Boas (D Calif., House)	1,000	7/27
George E. Brown Jr. (D Calif., House)	2,000	5/15
Phillip Burton (D Calif., House)	1,000	7/28
John Conyers Jr. (D Mich., House)	1,000	4/28
Dominick V Daniels (D N.J., House)	2,000	5/23

John H. Dent (D Pa., House)	1,000	5/15
John J. Desmond (D Mass., House)	1,000	9/7
Cornelius E. Gallagher (D N.J., House)	1,000	6/13
Michael Harrington (D Mass., House)	1,000	8/22
Wayne L. Hays (D Ohio, House)	1,500	5/10
John Hempelmann (D Wash., House)	1,000	8/9
Ray J. Madden (D Ind., House)	5,000	4/17
John J. McFall (D Calif., House)	1,000	5/15
Robert H. Mollohan (D W.Va., House)	2,000	8/16
Wayne Owens (D Utah, House)	1,000	6/13
Claude Pepper (D Fla., House)	1,000	8/16
Peter W. Rodino Jr. (D N.Y., House)	1,000	5/23
William R. Roy (D Kan., House)	1,000	5/17
John S. Stevens (D Kan., House)	1,500	7/28
W. S. (Bill) Stuckey (D Ga., House)	1,000	8/16
Frank Thompson Jr. (D N.J., House)	2,000	5/23
Ed V. Williams (D Idaho, House)	1,000	7/6
Andrew Young (D Ga., House)	1,500	8/4
Democratic Congressional Dinner Committee	500	8/7

Transport Workers. The Political Contributions Committee of the 150,000-member Transport Workers Union of America, AFL-CIO, as of Aug. 31 reported total receipts of $42,500.25, expenditures of $20,311.50—including transfer of $11,640 to the AFL-CIO's COPE June 13—and cash on hand of $83,489.43. Contributions included:

Claude Pepper (D Fla., House)	$ 1,000	8/28

Transportation. The Transportation Political Education League of the 262,600-member United Transportation Union, AFL-CIO, reported as of Sept. 7 total receipts of $89,446, expenditures of $119,298.50 and cash on hand of $236,258.47. Major contributions:

Hubert H. Humphrey (D, President)	$ 500	5/1
	4,800	5/5
Subtotal	5,300	
James Abourezk (D S.D., Senate)	500	8/9
Ray Blanton (D Tenn., Senate)	1,000	6/19
Terry M. Carpenter (D Neb., Senate)	1,000	5/26
Clifford P. Case (R N.J., Senate)	500	4/7
Richard Clark (D Iowa, Senate)	500	4/7
	500	8/7
Subtotal	1,000	
Ed Edmondson (D Okla., Senate)	1,000	8/3

Nick Galifianakis (D N.C., Senate)	500	6/7
	500	8/21
Subtotal	1,000	
Vance Hartke (D Ind., re-elected in 1970 to 6-year term)	4,800	6/5
Walter (Dee) Huddleston (D Ky., Senate)	500	8/21
Lee Metcalf (D Mont., Senate)	1,000	8/14
Walter F. Mondale (D Minn., Senate)	1,000	8/14
David L. Norvell (D N.M., Senate)	500	5/16
Claiborne Pell (D R.I., Senate)	500	8/14
David Pryor (D Ark., Senate)	500	4/7
	1,500	6/5
Subtotal	2,000	
Ralph W. Yarborough (D Texas, Senate)	2,000	5/2
Carl Albert (D Okla., House)	1,000	8/14
William R. Anderson (D Tenn., House)	500	4/26
Darrell E. Berg (D Neb., House)	500	9/1
Ellis B. Bodron (D Miss., House)	1,000	8/9
John Brademas (D Ind., House)	500	5/15
Charles S. Broomfield (D Mo., House)	500	7/3
George E. Brown Jr. (D Calif., House)	500	5/15
Yvonne B. Burke (D Calif., House)	500	5/15
Phillip Burton (D Calif., House)	500	5/1
Patrick L. Cooney (D Neb., House)	500	9/1
Daniel S. Cooper (D Mich., House)	500	7/28
John H. Dent (D Pa., House)	500	4/25
Al E. Engel (D Okla., House)	500	8/14
Donald M. Fraser (D Minn., House)	500	9/1
Richard Fulton (D Tenn., House)	500	5/30
Wayne L. Hays (D Ohio, House)	500	5/30
Louise Day Hicks (D Mass., House)	500	9/1
Frank Horton (R N.Y., House)	1,000	8/9
James R. Jones (D Okla., House)	500	8/14
Joseph E. Karth (D Minn., House)	500	8/14
Torbert H. Macdonald (D Mass., House)	500	8/9
Spark M. Matsunaga (D Hawaii, House)	500	9/1
Clem R. McSpadden (D Okla., House)	500	8/14
John M. Murphy (D N.Y., House)	1,000	8/7
Arnold Olsen (D Mont., House)	500	8/14
Claude Pepper (D Fla., House)	500	8/3
Teno Roncalio (D Wyo., House)	500	8/14

Fred B. Rooney (D Pa., House)	1,000	7/24
Philip R. Sharp (D Ind., House)	500	7/5
Tom Steed (D Okla., House)	500	8/14
W. S. (Bill) Stuckey (D Ga. House)	500	8/14

Grand Totals

Receipts:		**$ 3,770,404**
Expenditures:		**$ 2,767,775**
Contributions:		**$ 1,622,621**
Presidential:	**$693,303 (Includes $380,000 loans)**	
Senate:	**$434,728**	
House:	**$494,590**	
Cash on Hand:		**$ 3,743,229**

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Top Recipients

Listed below are candidates for the presidency, Senate and House receiving the largest campaign financial support to date in each category from business-related political committees whose reports were checked by Congressional Quarterly. Also shown are total contributions reported by the committees for each candidate.

Presidential Campaigns ($64,725)	
President Richard M. Nixon (R)	$55,955
Sen. Hubert H. Humphrey (D Minn.)	6,200
Sen. Edmund S. Muskie (D Maine)	1,000
Senate Campaigns ($133,900)	
Sen. John L. McClellan (D Ark.)	$13,550
Jesse A. Helms (R N.C.)—Jordan seat	10,300
Sen. Charles H. Percy (R Ill.)	9,500
Sen. John J. Sparkman (D Ala.)	7,900
Robert Hirsch (R S.D.)—Mundt seat	7,500
Henry S. Hibbard (R Mont.)—Metcalf seat	7,500
Louie B. Nunn (R Ky.)—Cooper seat	5,500
Sen. Mark O. Hatfield (R Ore.)	5,300
Dewey F. Bartlett (R Okla.)—Harris seat	5,300
Sen. James O. Eastland (D Miss.)	5,000
Sen. Gordon Allott (R Colo.)	5,000
Sen. Clifford P. Hansen (R Wyo.)	5,000
House Campaigns ($302,610)	
Rep. Dan Kuykendall (R Tenn.)	$7,700
Yvonne Braithwaite Burke (D Calif.)	7,500
Rep. William E. Minshall (R Ohio)	7,000
James G. Martin (R N.C.)—Jonas seat	7,000
R. Jack Hawke (R N.C.)—Galifianakis seat	7,000
James Abdnor (R S.D.)—Abourezk seat	7,000
Tennyson Guyer (R Ohio)—McCulloch seat	6,000

Rep. John Jarman (D Okla.)	6,000
Rep. Walter E. Powell (R Ohio)	6,000
Rep. Marvin L. Esch (R Mich.)	5,000
Rep. Bill Frenzel (R Minn.)	5,000
Rep. John M. Zwach (R Minn.)	5,000
Ralph S. Regula (R Ohio)—Bow seat	5,000
Richard O. Funsch (R Mo.)—Clay seat	5,000

Business Political Contributions

Listed below are campaign contribution totals for presidential, Senate and House candidates based on reports filed Sept. 10 or later by political committees of identifiable business-related interests. Not included are groups overtly founded on political partisanship or on the promotion of a particular party or candidate.

Federal law prohibits contributions by corporations or labor unions but provides for political activities by committees using voluntary donations. In many cases, business committees handle donations by employees. The listing is not comprehensive, although an effort has been made to include the most active and a sampling of others.

Business	Presidential	Senate	House
Aerospace-Defense ($23,500)			
Hughes Aircraft	$11,250	None	$ 7,450
Lockheed	None	None	None
LTV Aerospace	None	$ 500	500
Northrup Corp.	3,500	None	300
Banking-Insurance ($93,760)			
Bank-PAC	None	6,000	10,500
Chemical Bank	None	None	None
First National	None	None	None
Insurance	400	900	1,700
Insured Savers	None	100	2,250
Kemper Insurance	12,500	1,200	3,250
Mortgage Bankers	None	2,000	500
Savings Assn.	1,000	19,000	25,500
Savings Bankers	None	1,000	200
Security-Pacific	None	None	3,760
Union Bank	1,000	None	None
United California	500	500	None
Industry ($153,375)			
Apparel	None	1,500	1,500
BIPAC	None	27,500	78,100
Canners	None	500	500
Civic Trust	None	4,500	4,650
Confectioners	None	1,000	7,500
Fluor Corp.	2,125	3,000	2,000
Footwear	None	None	500
General Mills	None	None	700
Home Builders	None	2,900	3,000

Hotel-Motel	None	3,500	3,000
Motel	None	None	200
Olin Corp.	None	3,500	1,550
Weyerhauser	None	None	150
Investment ($22,550)			
Merrill Lynch	20,800	1,250	500
Medical or Health ($179,700)			
AMA	None	None	200
AMPAC	None	41,500	115,250
Dental	None	5,000	14,000
Podiatry	None	1,500	2,250
Public Utilities ($8,950)			
Gas Employees	1,550	200	200
General Telephone	2,000	None	3,600
Independent Telephone	200	600	None
National Telephone	None	200	400
Transportation ($19,400)			
Auto Dealers	None	1,500	None
Barge and Towing	1,000	1,800	None
Burlington Northern	None	None	6,500
Chicago and Northwestern	3,500	1,000	None
St. Louis San Francisco Rwy	3,400	250	450
Truck Operators	None	None	None
Totals	**$64,725**	**$133,900**	**$302,610**

102. The following charts reflect business contributions to federal candidates in the 1972 elections.

Campaign Gifts by Business Interests

AEROSPACE—DEFENSE

Hughes Aircraft. The Citizenship Fund of the Hughes Aircraft Company reported as of Aug. 31 total receipts of $126,729.17, expenditures of $54,634 and cash on hand of $115,081.68. Contributions and dates include:

George C. Wallace (D, President)	$ 175	5/23
George McGovern (D, President)	210	4/27
	240	5/8
	20	5/10
	25	5/23
Subtotal	495	
Richard M. Nixon (R, President)	80	7/3
	100	7/14
	400	8/3
	10,000	8/15
Subtotal	10,580	
Joel T. Broyhill (R Va., House)	200	6/6
Thomas N. Downing (D Va., House)	500	7/27
Andrew J. Hinshaw (R Calif., House)	500	8/8
Howard J. Snider (R Calif., House)	500	8/25
Charles E. Wiggins (R Calif., House)	250	8/18
Republican Congressional Boosters Club	2,000	6/14
	1,500	8/9
	1,000	8/14
	1,000	8/24
Subtotal	5,500	

Lockheed. The Lockheed Good Citizenship Program of Lockheed Aircraft Corporation reported no contributions through Aug. 31. The committee listed, as of that date, total receipts of $23,825.20, no expenditures and cash on hand of $23,825.20.

LTV Aerospace. The Active Citizenship Campaign Fund of the LTV Aerospace Corporation reported as of Aug. 31 total receipts of $27,876.76, total expenditures of $1,000 and cash on hand of $26,876.76. Contributions and dates:

Harold Barefoot Sanders (D Texas, Senate)	$ 500	8/31
Dale Milford (D Texas, House)	500	8/15

Northrup. The Northrup Corporation's Good Citizenship Committee reported as of Aug. 31 total receipts of $5,493.00, expenditures of $5,531.96 and cash on hand of $4,585.25. Contributions and dates include:

Hubert H. Humphrey (D, President)	$ 500	5/30
Richard M. Nixon (R, President)	3,000	8/24
Philip M. Crane (R Ill., House)	300	7/13

BANKING-INSURANCE

Bank-PAC. The Banking Profession Political Action Committee (Bank-PAC), which names no affiliates, reported as of Aug. 31 total receipts of $87,362.97, expenditures of $35,500 and cash on hand of $110,509.25. Contributions and dates include:

James O. Eastland (D Miss., Senate)	$ 3,000	6/27
John L. McClellan (D Ark., Senate)	3,000	6/14
Richard Bolling (D Mo., House)	1,000	8/28
Tom S. Gettys (D S.C., House)	2,500	4/11
Robert P. Hanrahan (R Ill., House)	1,500	6/31
Democratic Congressional Campaign Committee	3,000	8/28
Republican Congressional Campaign Committee	2,500	8/29

Chemical Bank. The Fund for Good Government of the Chemical Bank (New York) reported no contributions made as of Aug. 31. On that date, the committee reported total receipts of $14,496.00, no expenditures and cash on hand of $14,496.00.

First National City. The Citicorp Employees Voluntary Political Fund of the First National City Bank reported no contributions made through Aug. 31. On that date, the committee listed total receipts of $9,065.00, no expenditures and cash on hand of $9,065.00.

Insurance. The American Insurance Men's Political Action Committee (AIMPAC) lists no affiliates and reported through Aug. 31 total receipts of $16,437.82, expenditures of $17,870.00 and cash on hand of $2,399.23. Contributions and dates include:

Spiro T. Agnew (R , Vice President)	$ 400	5/8
Edward W. Brooke (R. Mass., Senate)	400	4/22
Marshall W. Cobleigh (R N.H., Senate)	500	8/2

William R. Cotter (D Conn., House)	400	5/8
Dominick V. Daniels (D N.J., House)	400	5/25
Thomas P. O'Neill Jr. (D Mass., House)	400	4/31
Wright Patman (D Texas, House)	500	3/10
Democratic National Committee	1,200	5/22
Republican National Committee	1,200	5/22

Insured Savers. The National League Political Action Committee of the National League of Insured Savers reported as of Sept. 7 total receipts of $964.43, expenditures exceeding $2,650 (the committee did not list its exact total in the Sept. 10 report) and cash on hand of $1,139.50. Contributions and dates include:

James B. Pearson (R Kan., Senate)	$ 100	3/20
Wright Patman (D Texas, House)	2,000	5/2
Democratic Congressional Campaign Committee	250	7/10

Kemper Insurance. The company's Campaign Fund reported as of Aug. 31 total receipts of $22,539.35, expenditures of $22,485.00 and cash on hand of $54.35. Contributions and dates include:

Richard M. Nixon (R, President)	$12,500	7/31
Dewey F. Bartlett (R Okla., Senate)	300	8/31
Mark O. Hatfield (R Ore., Senate)	300	8/31
Jesse A. Helms (R N.C., Senate)	300	8/31
Fletcher Thompson (R Ga., Senate)	300	8/31
John B. Anderson (R Ill., House)	300	8/31
Frank Annunzio (D Ill., House)	200	8/31
Harold R. Collier (R Ill., House)	500	8/31
Philip M. Crane (R Ill., House)	300	8/31
Robert P. Hanrahan (R Ill., House)	250	8/31
John J. Hoellen (R Ill., House)	200	8/31
Tom Railsback (R Ill., House)	250	8/31
Dan Rostenkowski (D Ill., House)	250	8/31
Samuel H. Young (R Ill., House)	1,000	8/31

Long Island Trust. The LITCO Good Government Fund of the Long Island Trust Company reported no contributions made to federal candidates through Aug. 31. On that date, the committee listed total receipts of $7,830.00, expenditures of $1,700.00 and cash on hand of $6,130.00.

Mortgage Bankers. Mor-PAC, a campaign finance committee related to the Mortgage Bankers Association of America, reported as of Aug. 31 total receipts of $29,711.50, expenditures of $9,958.19 and cash on hand of $33,090.32. Contributions and dates include:

John Sparkman (D Ala., Senate)	$ 1,000	6/23
	1,000	8/3
Subtotal	2,000	
Richard T. Hanna (D Calif., House)	500	5/2

Savings Association. The Savings Association Political Education Committee, which reports no affiliates, listed as of Aug. 31 total receipts of $86,394.64, expenditures of $98,205.64 and cash on hand of $18,419.79. Contributions and dates include:

Edmund S. Muskie (D President)	$1,000	4/11
Howard H. Baker Jr. (R Tenn., Senate)	1,000	3/25
Edward W. Brooke (R Mass., Senate)	2,000	3/7
Nick Galifianakis (D N.C., Senate)	2,000	6/9
David Pryor (D Ark., Senate)	2,000	6/2
John Sparkman (D Ala., Senate)	1,000	3/9
John G. Tower (R Texas, Senate)	1,000	7/17
Democratic Senatorial Campaign Committee	4,000	4/5
Republican Senatorial Campaign Committee	4,000	4/5
	2,000	8/15
Subtotal	6,000	
Tom S. Gettys (D S.C., House)	1,000	3/9
Robert E. Harris (Ind. Va., House)	1,000	3/20
Margaret M. Heckler (R Mass., House)	1,000	6/14
John H. Kyl (R Iowa, House)	1,000	7/17
John M. Murphy (D N.Y., House)	1,000	3/23
B. F. Sisk (D Calif., House)	2,000	7/26
Robert G. Stephens Jr. (D Ga., House)	1,000	7/28
Charles A. Vanik (D Ohio, House)	1,000	6/2
William B. Widnall (R N.J., House)	2,000	4/5
Democratic Congressional Campaign Committee	2,500	4/5
	5,000	6/8
	1,000	7/26
Subtotal	8,500	
Republican Congressional Campaign Committee	5,000	6/21
	1,000	7/26
Subtotal	6,000	
Democratic National Committee Dinner Committee	5,000	3/15
	500	6/26
Subtotal	5,500	
Democratic National Committee Festival of Stars	1,000	7/7

Savings Bankers. The Savings Bankers Non-Partisan Political Action Committee, which names no affiliates, reported as of Aug. 31 total receipts of $6,690.50, expenditures of $2,009.31 and cash on hand of $7,900.01. Contributions and dates include:

John Sparkman (D Ala., Senate)	$ 1,000	5/2
Ben B. Blackburn (R Ga., House)	200	7/21

Security-Pacific. The Active Citizenship Today Committee, related to the Security Pacific National Bank, Los Angeles, reported total receipts of $13,-731.90, expenditures of $5,534.20 and cash on hand of $10,335.05 as of Aug. 31. Contributions and dates include:

James C. Corman (D Calif., House)	$ 500	6/6
Barry M. Goldwater Jr. (R Calif., House)	502.70	6/9
Augustus F. Hawkins (D Calif., House)	500	5/30
B. F. Sisk (D Calif., House)	650	5/30
Victor V. Veysey (R Calif., House)	502.50	5/30

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Charles E. Wiggins (R Calif., House)	502	5/30
Bob Wilson (R Calif., House)	502	5/30

Union Bank. The Good Government Associates of the Union Bank, Los Angeles, as of Aug. 31 listed total receipts of $862.00, expenditures of $3,853.60 and cash on hand of $1,925.02. The only contribution:

Richard M. Nixon (R, President)	$ 1,000	8/3

United California. The Civic Affairs Association of the United California Bank reported as of Aug. 31 total receipts of $18,672.83, expenditures of $17,870.00 and cash on hand of $36,280.85. Contributions and dates include:

Paul N. McCloskey Jr. (R, President)	$ 500	4/27
Charles H. Percy (R Ill., Senate)	500	7/27

INDUSTRY

Apparel. The Committee for American Principles (CAP), related to the American Apparel Manufacturers Association, reported as of Aug. 31 total receipts of $10,297.00, expenditures of $6,523.56 and cash on hand of $7,806.91. Contributions and dates include:

Howard H. Baker Jr. (R Tenn., Senate)	$ 1,000	3/29
Jesse A. Helms (R N.C., Senate)	500	8/14
William L. Dickinson (R Ala., House)	500	5/15
G. Elliott Hagan (D Ga., House)	500	4/7
Wilbur D. Mills (D Ark., House)	500	6/12

BIPAC. The National Association of Manufacturers' Business-Industry Political Action Committee (BIPAC) reported as of Aug. 31 total receipts of $135,-890.18, expenditures of $126,634.20 and cash on hand of $416,583.63. Contributions and dates include:

Allen J. Ellender (D La., Senate)	$ 2,500	7/5
Jesse A. Helms (R N.C., Senate)	2,500	7/26
Henry S. Hibbard (R Mont., Senate)	2,500	8/30
Robert Hirsch (R S.D., Senate)	2,500	8/30
B. Everett Jordan (D N.C., Senate)	2,500	5/22
John L. McClellan (D Ark., Senate)	2,500	5/15
	2,500	6/5
	2,500	6/7
Subtotal	7,500	
James A. McClure (R Idaho, Senate)	2,500	6/27
Louie B. Nunn (R Ky., Senate)	2,500	7/21
Harold Barefoot Sanders (D Texas, Senate)	2,500	5/30
Fletcher Thompson (R Ga., Senate)	2,500	8/30
James Abdnor (R S.D., House)	2,000	7/17
Bill Baker (R Ariz., House)	1,500	8/14
Walter S. Baring (D Nev., House)	2,000	7/31
Ellis B. Bodron (D Miss., House)	1,000	6/9
	300	6/23
Subtotal	1,300	
Jack E. Brown (D Ariz., House)	500	8/16
Yvonne Braithwaite Burke (D Calif., House)	1,000	5/22
Earle Cabell (D Texas, House)	2,000	8/21
Bob Casey (D Texas, House)	1,000	4/28
Del Clawson (R Calif., House)	2,000	8/2
William S. Cohen (R Maine, House)	1,000	8/3
Rodney M. Cook (R Ga., House)	1,000	8/25
James J. Delaney (D N.Y., House)	1,000	6/1
John Dellenback (R Ore., House)	2,000	8/16
David W. Dennis (R Ind., House)	2,000	8/25
Samuel L. Devine (R Ohio, House)	1,000	8/3
Don Fuqua (D Fla., House)	500	8/28
Barry M. Goldwater Jr. (R Calif., House)	2,000	8/2
George A. Goodling (R Pa., House)	1,000	8/14
Tennyson Guyer (R Ohio, House)	1,000	8/7
Robert P. Hanrahan (R Ill., House)	2,000	6/27
R. Jack Hawke (R N.C., House)	1,000	8/14
	1,000	8/21
Subtotal	2,000	
John J. Hoellen (R Ill., House)	2,000	6/27
Robert J. Huber (R Mich., House)	1,000	8/28
William H. Hudnut III (R Ind., House)	2,000	8/31
William M. Ketchum (R Calif., House)	2,000	8/14
Wayne L. Kidwell (R Idaho, House)	1,500	7/28
Dan Kuykendall (R Tenn., House)	2,000	8/28
Earl F. Landgrebe (R Ind., House)	2,000	8/22
Manuel Lujan Jr. (R N.M., House)	2,000	7/31
Edward R. Madigan (R Ill., House)	2,000	8/3
William S. Mailliard (R Calif., House)	2,000	7/17

James G. Martin (R N.C., House)	2,000	7/26
Hector McGeachy (D N.C., House)	1,000	4/17
	1,000	5/22
Subtotal	2,000	
John L. McMillan (D S.C., House)	2,000	5/31
	2,000	8/30
Subtotal	4,000	
Dale Milford (D Texas, House)	1,000	5/18
William E. Minshall (R Ohio, House)	2,000	8/1
George M. O'Brien (R Ill., House)	1,000	8/3
Peter A. Peyser (R N.Y., House)	2,000	8/17
Walter E. Powell (R Ohio, House)	1,000	8/3
Fred Schwengel (R Iowa, House)	1,000	8/25
Richard G. Shoup (R Mont., House)	2,000	7/21
Robert L. F. Sikes (D Fla., House)	1,000	8/28
Ben Stone (D N.C., House)	1,000	6/9
	300	6/23
Subtotal	1,300	
Gene Taylor (R Mo., House)	1,000	8/28
Charles Thone (R Neb., House)	1,000	8/28
Ray Thornton (D Ark., House)	1,000	5/22
Carl A. Vergari (R Cons N.Y., House)	2,000	8/17
Charles E. Wiggins (R Calif., House)	2,000	8/2
Carter H. Witt (D Tenn., House)	500	7/17
Samuel H. Young (R Ill., House)	2,000	6/27

Canners. The Canners Public Affairs Committee, which named no affiliates, reported as of Aug. 31 total receipts of $298.50, expenditures of $2,910.00 and cash on hand of $370.28. Contributions and dates include:

Republican Senatorial Campaign Committee	$ 500	6/21
Walter S. Baring (D Nev., House)	200	6/22
Thomas N. Downing (D Va., House)	300	6/30

Civic Trust. The Industries Civic Trust (Chicago), which lists no affiliates, reported as of Aug. 31 total receipts of $30,070.00, expenditures of $14,758.50 and cash on hand of $15,311.50. Contributions and dates include:

Charles H. Percy (R Ill., Senate)	$ 2,500	5/12
Roman C. Pucinski (D Ill., Senate)	1,000	8/30
Republican Senatorial Campaign Committee	1,000	7/11
John J. Houlihan (D Ill., House)	250	5/25
John Jarman (D Okla., House)	2,000	7/20
Samuel H. Young (R Ill., House)	400	8/24
Democratic National Committee	1,000	7/17
Republican Convention Gala	1,000	7/17

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Confectioners. The Government Improvement Group (GIG) of the National Confectioners Association of the U.S. reported as of Aug. 31 total receipts of

$9,900.00 expenditures of $10,321.60 and cash on hand of $4,037.90. Contributions and dates include:

James B. Pearson (R Kan., Senate)	$ 1,000	4/19
Frank Annunzio (D Ill., House)	500	4/19
Bob Bergland (D Minn., House)	400	8/9
Joel T. Broyhill (R Va., House)	500	6/12
Harold R. Collier (R Ill., House)	500	5/17
Thomas S. Foley (D Wash., House)	500	4/19
	300	8/15
Subtotal	800	
Robert E. Gibson (D Va., House)	400	6/18
Richard H. Ichord (D Mo., House)	400	2/22
Walter B. Jones (D N.C., House)	400	6/29
Dawson Mathis (D Ga., House)	400	6/14
John L. McMillan (D S.C., House)	400	6/18
Ancher Nelsen (R Minn., House)	400	6/12
Frank A. Stubblefield (D Ky., House)	400	6/12
W.S. (Bill) Stuckey (D Ga., House)	500	3/6
William C. Wampler (R Va., House)	500	8/9
Bob Wilson (R Calif., House)	500	2/3
Larry Winn Jr. (R Kan., House)	400	2/4

Del Monte. The Del Monte Corporation's Voluntary Nonpartisan Good Government Fund reported no contributions made through Aug. 31. On that date, the committee listed total receipts of $11,082.50, no expenditures and cash on hand of $11,082.50.

Fluor Corporation. The Fluor Corporation's Employees Political Fund reported as of Sept. 10 total receipts of $6,689.85, expenditures of $11,592.89 and cash on hand of $2,830.55. Contributions and dates include:

Richard M. Nixon (R, President)	$ 50	8/4
	75	8/23
	2,000	9/5
Subtotal	2,125	
Pete V. Domenici (R N.M., Senate)	1,000	9/5
Jesse A. Helms (R N.C., Senate)	1,000	9/5
James A. McClure (R Idaho, Senate)	1,000	9/5
Chet Holifield (D Calif., House)	500	9/5
William M. Ketchum (R Calif., House)	500	9/5
Carlos J. Moorhead (R Calif., House)	500	9/5
J. Louis Watkins (D La., House)	500	9/5

Footwear. The American Footwear Industries Association's Shoe Manufacturers Good Government Committee on Aug. 31 listed no receipts, total expenditures of $550 and cash on hand of $6,108.64. Its only major contribution:

Louis C. Wyman (R N.H., House)	500	7/20

General Mills. Its Good Government Fund reported as of Aug. 31 total receipts of $5,975, expenditures of $1,100 and cash on hand of $4,875.00. Contributions and dates include:

Dan Kuykendall (R Tenn., House)	$ 200	8/11
House Conservative Caucus Campaign Committee	500	8/15

Home Builders. The Builders Political Action Committee, related to the National Association of Home Builders, reported as of Aug. 31 total receipts of $18,840.00, expenditures of $16,436.12 and cash on hand of $8,083.58. Contributions and dates include:

John Sparkman (D Ala., Senate)	400	3/13
	500	3/31
	2,000	5/31
Subtotal	2,900	
Walter S. Baring (D Nev., House)	1,000	5/25
Wright Patman (D Texas, House)	1,000	4/4
William B. Widnall (R N.J., House)	1,000	4/4

Hotel-Motel. The American Hotel and Motel Political Action Committee, related to the American Hotel and Motel Association reported as of Aug. 31 total receipts of $19,708.26, expenditures of $12,022.85 and cash on hand of $7,685.41. Contributions and dates include:

Howard H. Baker Jr. (R Tenn., Senate)	$ 500	4/14
Carl T. Curtis (R Neb., Senate)	500	4/14
James B. Pearson (R Kan., Senate)	500	4/14
Claiborne Pell (D R.I., Senate)	500	4/14
Ted Stevens (R Alaska, Senate)	500	5/8
John G. Tower (R Texas, Senate)	500	4/14
Republican Senatorial Campaign Committee	500	5/4
Hale Boggs (D La., House)	500	4/14
Dominick V. Daniels (D N.J., House)	500	5/8
William D. Ford (D Mich., House)	1,000	8/1
John Jarman (D Okla., House)	500	4/14
John C. Kluczyski (D Ill., House)	500	4/14

Menswear. The Menswear Public Affairs Committee of the Menswear Retailers of America reported no contributions made through Sept. 11. The committee on Sept. 11 listed total receipts of $3,500, expenditures of $50 and cash on hand of $3,776.00.

Motel. The Motel Development Committee of the Motel Association of America reported as of Sept. 10 total receipts of $1,537.51, expenditures of $1,537.51 and cash on hand of $3,652.49. Its only contribution above $100:

Joel T. Broyhill (R Va., House)	$ 200	5/23

Olin Corporation. Its Executives Voluntary Nonpartisan Political Fund reported as of Aug. 31 total receipts of $21,154.00, expenditures of $17,705.00 and cash on hand of $21,364.43. Contributions and dates include:

Jesse A. Helms (R N.C., Senate)	$ 500	8/31
Walter (Dee) Huddleston (D Ky., Senate)	500	8/31
Louie B. Nunn (R Ky., Senate)	500	8/31
John Sparkman (D Ala., Senate)	1,000	7/6
John G. Tower (R Texas, Senate)	500	5/22
Republican Senatorial Campaign Committee	500	8/9
Paul Findley (R Ill., House)	300	8/24
Werner H. Fornos (D Md., House)	250	8/31
Stewart B. McKinney (R Conn., House)	500	8/31
Otto E. Passman (D La., House)	500	8/31
Republican Convention Gala	1,000	7/31
	1,000	8/2
Subtotal	2,000	

Weyerhaeuser Company. The company's Tacoma Fund on Aug. 31 reported total receipts of $1,475.00, expenditures of $5,291.96 and cash on hand of $4,987.56. Its only contribution above $100:

Thomas S. Foley (D Wash., House)	$ 150	7/10

INVESTMENT

Merrill Lynch. The Effective Government Association related to Merrill Lynch, Pierce, Fenner and Smith reported as of Aug. 31 total receipts of $25,975.00, expenditures of $18,317.50 and cash on hand of $33,501.30. Contributions and dates include:

Hubert H. Humphrey (D, President)	$ 500	5/18
	5,000	6/1
Subtotal	5,500	
Richard M. Nixon (R, President)	15,000	before 5/31 (date obscured)
	300	7/31
Subtotal	15,300	
Jesse H. Helms (R N.C., Senate)	500	8/4
John L. McClellan (D Ark., Senate)	750	6/8
Charles G. Rose III (D N.C., House)	500	7/18
Democratic National Committee	5,000	7/8

MEDICAL OR HEALTH

AMA. The American Medical Association's affiliated Physicians Committee for Good Government

(D.C.) as of Aug. 31 reported total receipts of $2,000, expenditures of $700 and cash on hand of $1,781.93. Its only contribution above $100 through Aug. 31:

Ancher Nelsen (R Minn., House)	$ 200	5/18

AMPAC. The American Medical Association's related political agency, the American Medical Political Action Committee (AMPAC) reported as of Aug. 31 total receipts of $529,305.88, expenditures of $543,065.72 and cash on hand of $30,946.14. Contributions and dates include:

Gordon Allott (R Colo., Senate)	$ 5,000	7/28
Dewey F. Bartlett (R Okla., Senate)	5,000	8/30
Clifford P. Hansen (R Wyo., Senate)	5,000	8/14
Mark O. Hatfield (R Ore., Senate)	5,000	7/25
Jesse A. Helms (R N.C., Senate)	5,000	8/7
Henry S. Hibbard (R Mont., Senate)	5,000	8/3
Robert Hirsch (R S.D., Senate)	5,000	8/11
John L. McClellan (D Ark., Senate)	1,500	5/10
Charles H. Percy (R Ill., Senate)	5,000	7/25
James Abdnor (R S.D., House)	5,000	8/11
Joseph G. Anastasi (D Md., House)	1,000	7/17
Reuben S. Ayala (D Calif., House)	3,500	4/12
Page Belcher (R Okla., House)	1,000	6/1
Tom Bevill (D Ala., House)	2,000	4/12
John J. Bishop (R Md., House)	2,000	7/17
Stewart Bledsoe (R Wash., House)	3,500	8/14
Yvonne Braithwaite Burke (D Calif., House)	6,500	5/16
Goodloe E. Byron (D Md., House)	1,000	7/20
John N. Happy Camp (R Okla., House)	1,000	6/1
Charles E. Chamberlain (R Mich., House)	1,000	7/18
Daniel S. Cooper (D Mich., House)	1,000	7/18
Samuel L. Devine (R Ohio, House)	2,500	6/15
Marvin L. Esch (R Mich., House)	5,000	7/31
Bill Frenzel (R Minn., House)	5,000	6/1
Louis Frey Jr. (R Fla., House)	1,500	6/8
Richard O. Funsch (R Mo., House)	5,000	8/4
Robert E. Gibson (D Va., House)	2,000	6/6
Edith Green (D Ore., House)	250	8/30
Tennyson Guyer (R Ohio, House)	5,000	6/15
G. Elliott Hagan (D Ga., House)	1,000	8/4
R. Jack Hawke (R N.C., House)	5,000	6/1
Marjorie S. Holt (R Md., House)	2,500	7/17
Edward Hutchinson (R Mich., House)	500	7/18
John Jarman (D Okla., House)	2,500	8/30
Dan Kuykendall (R Tenn., House)	5,000	8/4
Manuel Lujan Jr. (R N.M., House)	1,000	8/14
James G. Martin (R N.C., House)	5,000	6/1
Dale Milford (D Texas, House)	2,000	5/10
Clarence E. Miller (R Ohio, House)	2,500	6/15
William E. Minshall (R Ohio, House)	5,000	6/15
William D. Pfender (R Pa., House)	2,000	8/14
Walter E. Powell (R Ohio, House)	5,000	6/15
Joel Pritchard (R Wash., House)	500	8/14
Ralph S. Regula (R Ohio, House)	5,000	6/15

J. Kenneth Robinson (R Va., House)	2,000	6/6
Harold Runnels (D N.M., House)	1,000	8/14
Sam Steiger (R Ariz., House)	2,500	6/1
Frank A. Stubblefield (D Ky., House)	1,000	5/10
Gene Taylor (R Mo., House)	500	8/10
Chalmers P. Wylie (R Ohio, House)	2,500	6/15
C. W. Bill Young (R Fla., House)	1,500	6/8
John M. Zwach (R Minn., House)	5,000	6/1

Dental. The American Dental Political Action Committee, related to the American Dental Association, reported as of Aug. 28 total receipts of $39,988.41, expenditures of $21,500 and cash on hand of $19,488.41. Contributions and dates include:

Edward W. Brooke (R Mass., Senate)	$ 500	8/21
Carl T. Curtis (R Neb., Senate)	1,000	8/14
Charles H. Percy (R Ill., Senate)	500	8/21
Jennings Randolph (D W.Va., Senate)	1,000	8/14
Strom Thurmond (R S.C., Senate)	1,000	8/14
John G. Tower (R Texas, Senate)	1,000	8/21
Goodloe E. Byron (D Md., House)	500	8/21
P. T. (Bud) Fleuchaus (R Fla., House)	1,000	8/8
Richard Fulton (D Tenn., House)	500	8/21
Frank Horton (R N.Y., House)	500	8/21
Carleton J. King (R N.Y., House)	500	8/21
Dan Kuykendall (R Tenn., House)	500	8/21
Peter N. Kyros (D Maine, House)	500	8/14
Robert L. Leggett (D Calif., House)	500	8/21
Norman F. Lent (R N.Y., House)	500	8/21
Donald J. Mitchell (R Cons. N.Y., House)	500	8/21
Robert H. Mollohan (D W.Va., House)	500	8/8
Otis G. Pike (D N.Y., House)	500	8/21
Howard W. Robison (R N.Y., House)	500	8/21
Paul G. Rogers (D Fla., House)	1,000	8/21
Gene Savoie (R Ariz., House)	1,000	7/27
Ben Valentine (R Calif., House)	500	8/21
Democratic Congressional Campaign Committee	2,000	8/21
Republican Congressional Campaign Committee	2,500	8/21

Podiatry. The Podiatry Political Action Committee, related to the American Podiatory Association, reported as of Aug. 31 total receipts of $2,007.00, expenditures of $3,950.00 and cash on hand of $4,164.34. Contributions and dates include:

Carl T. Curtis (R Neb., Senate)	$ 1,000	between 6/1 and 8/31 (date obscured)
Claiborne Pell (D R.I., Senate)	500	5/26
Ben B. Blackburn (R Ga., House)	250	between 6/1 and 8/31

Dominick V. Daniels (D N.J., House)	500	5/11
James F. Hastings (R N.Y., House)	500	5/8
Sam Steiger (R Ariz., House)	500	between 6/1 and 8/31
Charles A. Vanik (D Ohio, House)	500	5/26

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PUBLIC UTILITIES

Gas Employees. The Gas Employees Political Election Committee listed no affiliates and reported, as of Aug. 31, total receipts of $15,554.00, expenditures of $4,789.26 and cash on hand of $10,764.64. Contributions and dates include:

Richard M. Nixon (R, President)	$ 1,000	6/29
	250	8/25
	300	8/31
Subtotal	1,550	
Ed Edmondson (D Okla., Senate)	200	8/2
Julia Butler Hansen (D Wash., House)	200	8/1

General Telephone. The Employees' Good Government Club of General Telephone (California) reported as of Aug. 31 total receipts of $44,810.25, expenditures of $34,688.00 and cash on hand of $48,957.79. Contributions and dates include:

Richard M. Nixon (R, President)	$ 2,000	8/22
James C. Corman (D Calif., House)	450	8/24
Andrew J. Hinshaw (R Calif., House)	800	8/29
Chet Holifield (D Calif., House)	600	5/17
Ben Valentine (R Calif., House)	500	8/24
Charles E. Wiggins (R Calif., House)	250	8/24
Republican Congressional Boosters Club	1,000	6/2

Independent Telephone. The Communications Political Action Committee of the U.S. Independent Telephone Association reported as of Aug. 31 total receipts of $4,831.00, expenditures of $2,624.26 and cash on hand of $2,316.02. Contributions and dates include:

Hubert H. Humphrey (D, President)	$ 200	8/11
Ted Stevens (R Alaska, Senate)	200	8/14
William B. Spong Jr. (D Va., Senate)	200	6/6
Republican Senatorial Campaign Committee	200	6/22

National Telephone. The Telephone Education Committee of the National Telephone Cooperative Association reported as of Aug. 31 total receipts of $2,725.00, expenditures of $4,912.75 and cash on hand of $6,586.23. Contributions and dates include:

Robert Dole (R Kan., Senate)	$ 200	5/1
Lamar Baker (R Tenn., House)	200	7/18
Frank A. Stubblefield (D Ky., House)	200	7/18

TRANSPORTATION

Auto Dealers. The National Automobile Dealers Association's Committee of Automotive Retailers (CAR) reported as of Aug. 31 total receipts of $99.00, expenditures of $2,216.30 and cash on hand of $18,490.93. Contributions and dates include:

James O. Eastland (D Miss., Senate)	$ 1,000	5/1
John L. McClellan (D Ark., Senate)	500	5/12

Barge and Towing. Barge and Towing Industry Committee for Political Action, which lists no affiliates, reported as of Aug. 31 total receipts of $500.00, expenditures of $4,686.67 and cash on hand of $1,391.06. Contributions and dates include:

Richard M. Nixon (R, President)	$ 1,000	8/9
James O. Eastland (D Miss., Senate)	1,000	5/24
Ed Edmondson (D Okla., Senate)	500	8/2
John L. McClellan (D Ark., Senate)	300	5/5

Burlington Northern. The Burlington Northern Officers Voluntary Good Government Fund of the Burlington Northern Railroad reported as of Aug. 31 total receipts of $20,321.15, expenditures of $8,457.70 and cash on hand of $30,872.11. Contributions and dates include:

Wayne N. Aspinall (D Colo., House)	$ 500	7/19
James A. Blatnik (D Minn., House)	500	7/27
James M. Collins (R Texas, House)	300	4/20
Jon O. Haaven (R Minn., House)	300	7/19
Julia Butler Hansen (D Wash., House)	300	7/25
John Jarman (D Okla., House)	1,000	7/19
John Y. McCollister (R Neb., House)	300	5/4
Charles Thone (R Neb., House)	300	5/4
Republican Congressional Boosters Club	3,000	5/2

Chicago and Northwestern. The North Western Officers' Trust Account of the Chicago and Northwestern

Railroad reported as of Aug. 31 total receipts of $22,743,000, expenditures of $14,873.15 and cash on hand of $17,356.54. Contributions and dates include:

Richard M. Nixon (R, President)	$ 2,500	6/23
	1,000	8/30
Subtotal	3,500	
Charles H. Percy (R Ill., Senate)	1,000	5/18

St. Louis San Francisco Railway. Its Frisco Employees' Committee for Good Government reported as of Aug. 31 total receipts of $6,532.50, expenditures of $5,039.12 and cash on hand of $1,493.38. Contributions and dates include:

Richard M. Nixon (R, President)	$ 3,200	4/19
	200	6/8
Subtotal	3,400	
Winton M. Blount (R Ala., Senate)	250	6/23
Richard H. Ichord (D Mo., House)	200	5/10
Gene Taylor (R Mo., House)	250	6/23

Truck Operators. The Truck Operators Nonpartisan Committee, which lists no affiliates, reported no contributions made through Sept. 10. As of Sept. 10, it reported total receipts of $25,434.50, expenditures of $931.22 and cash on hand of $26,235.54.

Grand Totals

Receipts:		$1,517,930
Expenditures:		$1,176,990
Contributions:		$ 501,235
Presidential:	$ 64,725	
Senate:	$ 133,900	
House:	$ 302,610	
Cash on Hand:		$1,195,017

103. The following charts reflect other interest group contributions to federal candidates in the 1972 elections.

1972 Campaign Donations

Campaign Gifts by Farm Interests

ADEPT. The Agricultural and Dairy Education Political Trust (ADEPT), related to **Mid-America Dairymen Inc.**, reported total receipts of $252,676.42, expenditures of $324,292.58—including candidate contributions of $321,155.00—and cash on hand of $39,884.18 as of Dec. 31, 1972. Upper level contributions since Sept. 1, 1972:

President

Richard M. Nixon (R)+		20,000	11/6
		5,000	9/19
		2,000	9/19
		5,000	9/19
		7,000	9/19
		6,000	9/19
Total for year		45,000	

Senate

Republican Senatorial Campaign Committee		2,000	10/17
James Abourezk (D S.D.)+		5,000	12/5
		5,000	10/6
Subtotal		10,000	
Total for year	12,500		
Gordon Allott (R Colo.)		2,000	10/31
Joseph R. Biden Jr. (D Del.)+		2,000	12/5
Dick Clark (D Iowa)+		5,000	12/5
Carl T. Curtis (R Neb.)+		2,000	10/13
Ed Edmondson (D Okla.)		5,000	9/13
Mark O. Hatfield (R Ore.)+		2,000	10/6
William D. Hathaway (D Maine)+		1,000	10/17
Walter F. Mondale (D Minn.)+		2,500	12/11
		2,500	10/17
Total for year		5,000	
Sam Nunn (D Ga.)+		5,000	11/1
Claiborne Pell (D R.I.)+		2,000	12/5

House

Democratic Congressional Campaign Committee		4,500	10/31
		4,000	11/1
Total for year		8,500	

National Republican Congressional Committee	3,000	10/30
William R. Anderson (D Tenn.)	1,000	10/6
Mark Andrews (R N.D.)+	1,000	10/6
Leslie C. Arends (R Ill.)+	1,000	10/17
Les Aspin (D Wis.)+	2,500	10/2
John Brademas (D Ind.)+	1,000	11/6
Bill D. Burlison (D Mo.)+	1,000	10/31
William (Bill) Clay (D Mo.)+	2,000	10/10
John C. Culver (D Iowa)+	1,000	10/9
Frank E. Denholm (D S.D.)+	2,000	10/10
Marvin L. Esch (R Mich.)+	1,000	11/1
Werner H. Fornos (D Md.)	1,000	11/6
Jon O. Haaven (R Minn.)	1,000	11/1
John Paul Hammerschmidt (R Ark.)+	1,000	10/2
Julia Butler Hansen (D Wash.)+	1,000	10/6
William L. Hungate (D Mo.)+	1,000	10/2
James R. Jones (D Okla.)+	1,000	11/6
Jerry Litton (D Mo.)+	5,000	11/30
	5,000	9/22
Total for year	10,000	
Dave Martin (R Neb.)+	2,000	10/13
Robert B. (Bob) Mathias (R Calif.)+	1,000	10/17
John Y. McCollister (R Neb.)+	2,000	10/13
John Melcher (D Mont.)+	1,000	10/6
Abner J. Mikva (D Ill.)	1,000	11/6
	1,000	10/6
Total for year	2,000	
John M. Murphy (D N.Y.)+	1,000	11/1
Melvin Price (D Ill.)+	1,000	10/2
Graham Purcell (D Texas)	5,000	10/6
Albert H. Quie (R Minn.)+	1,000	10/2
Teno Roncalio (D Wyo.)+	1,000	10/2
Keith G. Sebelius (R Kan.)+	2,000	10/2
William J. Scherle (R Iowa)+	1,500	10/2
George E. Shipley (D Ill.)+	5,000	10/2
B. F. Sisk (D Calif.)+	1,000	10/17
Joe Skubitz (R Kan.)+	1,000	10/2
James W. Symington (D Mo.)+	1,000	11/1
	1,000	11/2
Total for year	2,000	
Gene Taylor (R Mo.)+	5,000	10/9
Charles M. Teague (R Calif.)+	1,000	10/17
Charles Thone (R Neb.)+	2,000	10/13
John M. Zwach (R Minn.)+	2,000	10/2

Other upper level contributions reported before September 1972:

President

Hubert H. Humphrey (D)	1,000
Wilbur D. Mills (D)	16,600

Senate

David Pryor (D Ark.)	10,000

House

Charles S. Broomfield (D Mo.)	9,000
Richard H. Ichord (D Mo.)+	2,500
John W. Jenrette Jr. (D S.C.)	1,000
Wayne L. Kidwell (R Idaho)	2,000
John H. Kyl (R Iowa)	1,000
Edward Mezvinsky (D Iowa)+	4,000
William R. Roy (D Kan.)+	1,000
Frank A. Stubblefield (D Ky.)+	1,500
Ted Wyckoff (D Ariz.)	1,000

CTAPE. The Committee for Thorough Agricultural Political Education (CTAPE), related to the **Associated Milk Producers Inc.**, reported total receipts of $1,801,479.20, mostly transferred from the Trust for Agricultural Political Education (TAPE), expenditures of $990,947.77—including candidate contributions of $906,245.00—and cash on hand of $810,531.43 as of Dec. 31, 1972. Upper level contributions since Sept. 1, 1972:

Senate

Republican Senatorial Campaign Committee	150,000	10/27
	27,500	10/27
Total for year	177,500	
Democratic Senatorial Campaign Committee	25,000	10/17
	47,000	10/27
Total for year	72,000	
James Abourezk (D S.D.)+	4,000	11/21
	2,400	10/19
	5,000	9/27
Subtotal	11,400	
Total for year 13,900		
Howard H. Baker Jr. (R Tenn.)+	4,000	10/23
Total for year 6,000		
Joseph R. Biden Jr. (D Del.)+	1,000	12/21
	1,000	10/19
Total for year	2,000	
Dewey F. Bartlett (R Okla.)+	1,000	10/27
Dick Clark (D Iowa)+	1,000	12/21
Jack Daniels (D N.M.)	1,000	10/23
Robert Dole (R Kan.)+	2,500	9/27
Pete V. Domenici (R N.M.)+	2,500	10/27
James O. Eastland (D Miss.)+	5,000	11/7
	5,000	10/13
Subtotal	10,000	
Total for year 15,000		
Ed Edmondson (D Okla.)	5,000	10/2
	10,000	10/24
	5,000	9/25
Subtotal	20,000	

Total for year	21,000		
Jesse A. Helms (R N.C.)+		1,000	10/27
Walter (Dee) Huddleston (D Ky.)+		1,500	10/19
Jack Miller (R Iowa)		4,000	10/18
Lee Metcalf (D Mont.)+		1,000	10/19
Louie B. Nunn (R Ky.)		1,500	10/27
Sam Nunn (D Ga.)+		1,000	10/19
Claiborne Pell (D R.I.)+		1,000	12/21
Roman C. Pucinski (D Ill.)		2,500	9/13
Barefoot Sanders (D Texas)		3,000	10/21
		5,000	10/19
		10,000	10/24
Subtotal		18,000	
Total for year	23,000		
John Sparkman (D Ala.)+		1,000	10/19
William B. Spong Jr. (D Va.)		1,000	10/19
Fletcher Thompson (R Ga.)		1,000	10/27
House			
Democratic Congressional Campaign		25,000	10/17
		62,500	10/27
Total for year		87,500	
Republican Congressional Campaign		25,000	10/27
		150,000	10/27
Total for year		175,000	
James Abdnor (R S.D.)+		4,500	12/4
		500	9/27
Total for year		5,000	
Bob Bergland (D Minn.)+		2,500	10/18
Total for year	4,500		
David R. Bowen (D Miss.)+		2,000	12/21
John C. Culver (D Iowa)+		2,500	10/18
Ed Jones (D Tenn.)+		2,500	10/23
		2,500	9/27
Subtotal		5,000	
Total for year	6,000		
Robert W. Kastenmeier (D Wis.)+		2,500	10/19
Manuel Lujan Jr. (R N.M.)+		2,500	10/27
Clem Rogers McSpadden (D Okla.)+		5,000	10/27
Total for year	6,000		
John Melcher (D Mont.)+		2,500	10/19
Dale Milford (D Texas)+		2,500	10/19
Robert Price (R Texas)+		3,000	10/21
Graham Purcell (D Texas)		2,500	10/18
Total for year	5,000		
William R. Roy (D Kan.)+		3,000	10/14
		1,000	7/13
Total for year		4,000	
Vernon W. Thomson (R Wis.)+		2,500	10/27
Total for year	3,500		

Other upper level contributions reported before September 1972:

President

Hubert H. Humphrey (D)	7,500
Wilbur D. Mills (D)	25,000

Senate

Carl T. Curtis (R Neb.)+	1,500
Allen J. Ellender (D La.)	3,000
Nick Galifianakis (D N.C.)	1,000
B. Everett Jordan (D N.C.)	2,500
John L. McClellan (D Ark.)+	5,000
John G. Tower (R Texas)+	1,000

House

Les Aspin (D Wis.)+	1,000
Nick Begich (D Alaska)+	1,000
Frank E. Denholm (D S.D.)+	1,000
Gerald R. Ford (R Mich.)+	4,000
Wayne L. Kidwell (R Idaho)	1,000
Dan Kuykendall (R Tenn.)+	1,000
David R. Obey (D Wis.)+	1,000
William J. Scherle (R Iowa)+	1,000
Frank A. Stubblefield (D Ky.)+	1,500
Charles Thone (R Neb.)+	1,000
Charles Turnbull (D Minn.)	1,000
John M. Zwach (R Minn.)+	2,000

PACE. Political Action for Cooperative Effectiveness (PACE), associated with the **National Council of Farmer Cooperatives**, reported total receipts of $11,678.00, expenditures of $20,197.73—including candidate

contributions of $17,650—and cash on hand of $334.92 as of Dec. 31, 1972. There were no sizable contributions listed after Sept. 1, 1972.

Upper level contributions reported before September 1972:

Republican National Associates	1,000
James Abourezk (D S.D.)+	500
Carl T. Curtis (R Neb.)+	500
Clifford P. Hansen (R Wyo.)+	500
Mark O. Hatfield (R Ore.)+	500
James A. McClure (R Idaho)+	500
Jack Miller (R Iowa)	500
Walter F. Mondale (D Minn.)+	500
James B. Pearson (R Kan.)+	500
Charles H. Percy (R Ill.)+	500

SPACE. The Trust for Special Political Agricultural Community Education (SPACE), associated with **Dairymen Inc.**, reported total receipts of $222,780.19, expenditures of $271,318.93—including candidate contributions of $254,700—and cash on hand of $85,587.23 as of Dec. 31, 1972. Upper level contributions since Sept. 1, 1972:

President

Hubert H. Humphrey (D)		2,500	9/25
Total for year	3,500		
Richard M. Nixon (R)+		25,000	10/28
Total for year	50,000		

Senate

James Abourezk (D S.D.)+		1,500	9/25
Total for year	2,500		
Howard H. Baker Jr. (R Tenn.)+		1,000	9/25
		1,000	10/2
Subtotal		2,000	
Total for year	3,000		
Pete V. Domenici (R N.M.)+		1,000	10/6
James O. Eastland (D Miss.)+		5,000	9/25
Nick Galifianakis (D N.C.)		3,000	10/24
Total for year	5,000		
Walter (Dee) Huddleston (D Ky.)+		3,500	11/6
		15,000	11/24
Subtotal		18,500	
Total for year	22,000		
J. Bennett Johnston Jr. (D La.)+		2,500	12/19
		1,000	9/11
Total for year		3,500	
John L. McClellan (D Ark.)+		2,500	10/6
Louie B. Nunn (R Ky.)		4,000	10/23
Sam Nunn (D Ga.)+		5,000	10/18
William Lloyd Scott (R Va.)+		1,000	11/30
		4,000	12/4
Total for year		5,000	
William B. Spong Jr. (D Va.)		3,000	10/6
Total for year	4,000		
Strom Thurmond (R S.C.)+		3,000	10/6

House

Democratic Congressional Campaign	10,000	10/23
John B. Breaux (D La.)+	1,500	9/18
John W. Jenrette Jr. (D S.C.)	2,000	10/20
Ed Jones (D Tenn.)+	5,000	10/6
Walter B. Jones (D N.C.)+	1,500	10/3
Edward Mezvinsky (D Iowa)+	1,500	10/6
Wilmer Mizell (R N.C.)+	1,500	10/3
Graham Purcell (D Texas)	1,500	11/2
George E. Shipley (D Ill.)+	1,500	10/23
Neal Smith (D Iowa)+	2,000	10/25
William C. Wampler (R Va.)+	2,500	10/6
J. Louis Watkins (D La.)	1,500	11/2

Contributions of $1,000 each went to 32 Democrats and 15 Republicans.

Other upper level contributions reported before September 1972:

President

Wilbur D. Mills (D)	12,500
George C. Wallace (D)	2,000

Senate

Democratic Senatorial Campaign Committee	5,000
B. Everett Jordan (D N.C.)	2,000
Fletcher Thompson (R Ga.)	1,000

House

William R. Anderson (D Tenn.)	1,000
LaMar Baker (R Tenn.)+	1,000
Mendel J. Davis (D S.C.)+	3,000
John J. Duncan (R Tenn.)+	1,000
Richard Fulton (D Tenn.)+	1,000
Robert E. Gibson (D Va.)	1,000
Ronald B. (Bo) Ginn (D Ga.)+	1,000
Wayne L. Kidwell (R Idaho)	1,000
Dan Kuykendall (R Tenn.)+	1,000
J. Kenneth Robinson (R Va.)+	1,000

TAPE. The Trust for Agricultural Political Education (TAPE), arm of the **Associated Milk Producers Inc.**, reported total receipts of $874,298.70, expenditures of $1,773,058.78, almost all in transfers to CTAPE, and cash on hand of $196,102.31 as of Dec. 31, 1972.

Business and Professional Interests

AMPAC. The **American Medical Association's** related political agency, the American Medical Political Action Committee (AMPAC), reported total receipts of $845,166.61, expenditures of $874,902.28—including candidate contributions of $853,051.34—and cash on hand of $8,470.31 as of Dec. 31, 1972. Major contributions reported after Sept. 1, 1972:

Senate

Howard H. Baker Jr. (R Tenn.)+		5,000	9/22
Dick Clark (D Iowa)+		1,000	12/6
Carl T. Curtis (R Neb.)+		4,000	9/22
Walter (Dee) Huddleston (D Ky.)+		1,000	10/3
John L. McClellan (D Ark.)+		1,500	5/10
Total for year	3,000		
James A. McClure (R Idaho)+		5,000	9/12
Louie B. Nunn (R Ky.)		2,500	10/3
Sam Nunn (D Ga.)+		2,500	10/12
William Lloyd Scott (R Va.)+		5,000	9/6
Fletcher Thompson (R Ga.)		2,500	10/12

House

S. R. Abramson (American La.)	3,500	9/8
LaMar Baker (R Tenn.)+	5,000	9/22
Allan E. Bloom (R Ind.)	5,000	9/8
Joel T. Broyhill (R Va.)+	5,000	9/6
M. Caldwell Butler (R Va.)+	3,000	9/6
William S. Cohen (R Maine)+	4,000	10/17

Rodney M. Cook (R Ga.)	5,000	9/6
David W. Dennis (R Ind.)+	3,500	9/22
Daniel J. Flood (D Pa.)+	5,000	9/25
Harold V. Froehlich (R Wis.)+	5,000	10/12
Andrew J. Hinshaw (R Calif.)+	5,000	11/22
William H. Hudnut III (R Ind.)+	5,000	10/19
Peter N. Kyros (D Maine)+	3,500	10/17
Earl F. Landgrebe (R Ind.)+	3,750	9/8
Martin A. Linsky (R Mass.)	3,000	10/17
John Y. McCollister (R Neb.)+	4,000	9/22
James D. (Mike) McKevitt (R Colo.)	3,200	10/17
Stewart B. McKinney (R Conn.)+	3,000	10/3
Carlos J. Moorhead (R Calif.)+	5,000	11/22
Richard G. Shoup (R Mont.)+	5,000	9/8
Howard J. Snider (R Calif.)	5,000	9/27
Steven D. Symms (R Idaho)+	5,000	9/12
Charles Thone (R Neb.)+	4,000	9/22
David Towell (R Nev.)+	3,000	10/9
Gary Tyler (D La.)	3,500	9/8
John Vickerman (R S.D.)	5,000	9/25
Robert K. Wolthuis (R Utah)	3,000	11/3
	2,000	10/24
Total for year	5,000	
G. William Whitehurst (R Va.)+	3,000	9/6
Edward L. Young (R S.C.)+	1,000	10/31
	2,000	10/24
Total for year	3,000	
Roger H. Zion (R Ind.)+	3,000	9/8

Other upper level contributions reported before September 1972:

Senate

Gordon Allott (R Colo.)	5,000
Dewey F. Bartlett (R Okla.)+	5,000
Clifford P. Hansen (R Wyo.)+	5,000
Mark O. Hatfield (R Ore.)+	5,000
Jesse A. Helms (R N.C.)+	5,000
Henry S. Hibbard (R Mont.)	5,000
Robert Hirsch (R S.D.)	5,000
Charles H. Percy (R Ill.)+	5,000

House

James Abdnor (R S.D.)+	5,000
Joseph G. Anastasi (D Md.)	1,000

Reuben S. Ayala (D Calif.)	3,500
Page Belcher (R Okla.)	1,000
Tom Bevill (D Ala.)+	2,000
John J. Bishop (R Md.)	2,000
Stewart Bledsoe (R Wash.)	3,500
Yvonne Brathwaite Burke (D Calif.)+	6,500
Goodloe E. Byron (D Md.)+	1,000
John N. Happy Camp (R Okla.)+	1,000
Charles E. Chamberlain (R Mich.)+	1,000
Daniel S. Cooper (D Mich.)	1,000
Samuel L. Devine (R Ohio)+	2,500
Marvin L. Esch (R Mich.)+	5,000
Bill Frenzel (R Minn.)+	5,000
Louis Frey Jr. (R Fla.)+	1,500
Richard O. Funsch (R Mo.)	5,000
Robert E. Gibson (D Va.)	2,000
Tennyson Guyer (R Ohio)+	5,000
G. Elliott Hagan (D Ga.)	1,000
R. Jack Hawke (R N.C.)	5,000
Marjorie S. Holt (R Md.)+	2,500
John Jarman (D Okla.)+	2,500
Dan Kuykendall (R Tenn.)+	5,000
Manuel Lujan Jr. (R N.M.)+	1,000
James G. Martin (R N.C.)+	5,000
Dale Milford (D Texas)+	2,000
Clarence E. Miller (R Ohio)+	2,500
William E. Minshall (R Ohio)+	5,000
William D. Mlender (R Pa.)	2,000
Walter E. Powell (R Ohio)+	5,000
Ralph S. Regula (R Ohio)+	5,000
J. Kenneth Robinson (R Va.)+	2,000
Harold Runnels (D N.M.)+	1,000
Sam Steiger (R Ariz.)+	2,500
Frank A. Stubblefield (D Ky.)+	1,000
Chalmers P. Wylie (R Ohio)+	2,500
C. W. Bill Young (R Fla.)+	1,500
John M. Zwach (R Minn.)+	5,000

Bank-PAC. The Banking Profession Political Action Committee (Bank-PAC), which names no affiliates, reported total receipts of $172,567.83, expenditures of $197,750—all shown as candidate contributions—and cash on hand of $33,387.30 as of Dec. 31, 1972. Contributions reported after Sept. 1, 1972:

Senate

Democratic Senatorial Campaign Committee	2,500	11/6
Republican Senatorial Campaign Committee	1,500	12/14
	5,000	10/12
	5,000	11/21
	1,500	11/24
	5,000	9/1
	750	9/8
	5,000	9/20
Total for year	23,750	

Howard H. Baker Jr. (R Tenn.)+		5,000	11/13
Dewey F. Bartlett (R Okla.)+		1,000	10/30
J. Caleb Boggs (R Del.)		3,000	12/18
Edward W. Brooke (R Mass.)+		1,000	11/13
James O. Eastland (D Miss.)+		2,000	9/1
Total for year	5,000		
Nick Galifianakis (D N.C.)		1,000	9/28
Henry S. Hibbard (R Mont.)		1,000	11/3
James A. McClure (R Idaho)+		1,000	11/7
James B. Pearson (R Kan.)+		3,000	9/15
Claiborne Pell (D R.I.)+		3,000	11/1
Charles H. Percy (R Ill.)+		3,000	10/11
Jennings Randolph (D W.Va.)+		750	10/24
		750	9/16
		750	9/26
		750	10/6
Total for year		3,000	
John Sparkman (D Ala.)+		1,000	10/27
		5,000	9/5
		10,000	10/6
Subtotal		16,000	
Total for year	16,100		
William B. Spong Jr. (D Va.)		3,000	9/21
Fletcher Thompson (R Ga.)		1,000	10/27
John G. Tower (R Texas)+		5,000	10/30
House			
Democratic Congressional Campaign Committee		2,500	10/31
		1,500	10/24
		1,500	9/16
		1,000	9/18
		2,500	10/10
Subtotal		9,000	
Total for year	12,000		
Republican Congressional Campaign Committee		3,000	9/15
		3,000	9/22
		2,500	10/6
Subtotal		8,500	
Total for year	11,000		

Glenn M. Anderson (D Calif.)+	1,000	12/12
Alphonzo Bell (R Calif.)+	1,500	9/12
Donald G. Brotzman (R Colo.)+	1,500	10/17
Garry Brown (R Mich.)+	2,500	9/1
James T. Broyhill (R N.C.)+	2,500	9/13
Hugh L. Carey (D N.Y.)+	1,500	9/20
Charles J. Carney (D Ohio)+	1,500	9/25
Daniel P. Coman (D Ill.)	2,500	9/5
John Dellenback (R Ore.)+	1,000	12/19
John N. Erlenborn (R Ill.)+	1,000	12/28
Gerald R. Ford (R Mich.)+	2,500	9/8
Richard Fulton (D Tenn.)+	1,500	9/22
Edith Green (D Ore.)+	2,500	11/14

James M. Hanley (D N.Y.)+	1,000	9/11
James Harvey (R Mich.)+	750	9/5
	750	9/11
Total for year	1,500	
John Jarman (D Okla.)+	1,500	9/7
Ray J. Madden (D Ind.)+	1,000	11/17
John E. Moss (D Calif.)+	1,500	9/13
Claude Pepper (D Fla.)+	1,500	10/10
Jerry L. Pettis (R Calif.)+	1,500	9/8
J. Kenneth Robinson (R Va.)+	1,000	9/7
Dan Rostenkowski (D Ill.)+	1,000	9/18
John H. Rousselot (R Calif.)+	2,500	9/7
Herman T. Schneebeli (R Pa.)+	1,500	12/21
B. F. Sisk (D Calif.)+	2,500	10/6
W. S. (Bill) Stuckey (D Ga.)+	2,000	10/26
Leonor K. Sullivan (D Mo.)+	1,000	9/22
Frank Thompson Jr. (D N.J.)+	1,500	9/11

Other upper level contributions reported before September 1972:

Senate	
John L. McClellan (D Ark.)+	3,000
House	
Richard Bolling (D Mo.)+	1,000
Tom S. Gettys (D S.C.)+	2,500
Robert P. Hanrahan (R Ill.)+	1,500

BIPAC. The Business-Industry Political Action Committee (BIPAC), founded by the **National Association of Manufacturers**, reported total receipts of $195,671.53, expenditures of $512,434.29—including $442,100 of candidate contributions—and cash on hand of $90,564.89 as of Dec. 31, 1972. Major contributions reported after Sept. 1, 1972:

Senate			
Howard H. Baker Jr. (R Tenn.)+		2,500	10/4
Dewey F. Bartlett (R Okla.)+		2,500	9/7
		2,500	9/26
		2,500	10/26
Total for year		7,500	
J. Caleb Boggs (R Del.)		2,500	10/10
		2,500	10/26
Total for year		5,000	
John H. Chafee (R R.I.)		2,500	10/25
Pete V. Domenici (R N.M.)+		2,500	10/6
		2,500	9/7
Total for year		5,000	
Jesse A. Helms (R N.C.)+		2,500	10/11
		2,500	9/5
		2,500	10/26
Subtotal		7,500	
Total for year	10,000		

James A. McClure (R Idaho)+		2,500	9/14
		2,500	10/2
		2,500	10/26
Subtotal		7,500	
Total for year	10,000		
Louie B. Nunn (R Ky.)		2,500	9/18
		2,500	10/18
Subtotal		5,000	
Total for year	7,500		
Charles H. Percy (R Ill.)+		2,500	9/7
Total for year	2,700		
William Lloyd Scott (R Va.)+		2,500	10/3
		2,500	9/8
Total for year		5,000	
Fletcher Thompson (R Ga.)		2,500	10/5
		2,500	10/26
		2,500	11/3
Subtotal		7,500	
Total for year	10,000		
John G. Tower (R Texas)+		2,500	10/12
		2,500	9/14
Total for year		5,000	

House

Stewart Bledsoe (R Wash.)	3,000	10/17
	2,000	10/3
Total for year	5,000	
John B. Conlan (R Ariz.)+	2,000	10/17
	2,000	10/2
Total for year	4,000	
William L. Dickinson (R Ala.)+	2,000	10/17
	2,000	9/8
Total for year	4,000	
Martin L. Esch (R Mich.)+	2,000	9/27
	2,000	10/13
Total for year	4,000	
Harold V. Froehlich (R Wis.)+	1,000	10/7
	2,000	10/2
Total for year	3,000	
John O. Haaven (R Minn.)	2,000	9/26
	2,000	10/12
Total for year	4,000	
James T. Johnson (R Colo.)+	2,500	10/2
Bill Kidd (R Wyo.)	2,000	10/19
	2,000	10/2
Total for year	4,000	
John H. Kyl (R Iowa)	2,000	9/14
	2,000	10/26
Total for year	4,000	
Sherman P. Lloyd (R Utah)	2,500	9/26
James D. (Mike) McKevitt (R Colo.)	2,500	10/2
Richard M. Rittenband (R Conn.)	2,000	9/14
	2,000	10/2
Total for year	4,000	
Fred W. Rohlfing (R Hawaii)	3,000	10/10
Ronald A. Sarasin (R Conn.)+	2,000	10/19
	1,000	10/2
Total for year	3,000	

Howard J. Snider (R Calif.)	2,000	10/17
	2,000	10/2
Total for year	4,000	
Robert H. Steele (R Conn.)+	2,000	10/20
	2,000	9/14
Total for year	4,000	
Steven D. Symms (R Idaho)+	2,000	10/19
	2,000	9/5
Total for year	4,000	
Vernon W. Thomson (R Wis.)+	2,000	10/17
	2,000	10/2
Total for year	4,000	

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John M. Zwach (R Minn.)+	2,000	9/26
	2,000	10/12
Total for year	4,000	

Additional contributions of $2,000 each to 49 Republicans and to Democrat James A. Haley (Fla.).

Other upper level contributions reported before September 1972 included:

Senate

Allen J. Ellender (D La.)	2,500
Henry S. Hibbard (R Mont.)	2,500
Robert Hirsch (R S.D.)	2,500
B. Everett Jordan (D N.C.)	2,500
John L. McClellan (D Ark.)+	2,500
	2,500
	2,500
Total for year	7,500

House

James Abdnor (R S.D.)+	2,000
Bill Baker (R Ariz.)	1,500
Walter S. Baring (D Nev.)	2,000
Ellis B. Bodron (D Miss.)	1,000
	300
Total for year	1,300
Earle Cabell (D Texas)	2,000
Del Clawson (R Calif.)+	2,000
John Dellenback (R Ore.)+	2,000
David W. Dennis (R Ind.)+	2,000
Barry M. Goldwater Jr. (R Calif.)+	2,000
Robert P. Hanrahan (R Ill.)+	2,000
R. Jack Hawke (R N.C.)	1,000
	1,000
Total for year	2,000
John J. Hoellen (R Ill.)	2,000
William H. Hudnut III (R Ind.)+	2,000
William M. Ketchum (R Calif.)+	2,000
Wayne L. Kidwell (R Idaho)	1,500
Dan Kuykendall (R Tenn.)+	2,000
Earl F. Landgrebe (R Ind.)+	2,000

Manuel Lujan Jr. (R N.M.)+		2,000
Edward R. Madigan (R Ill.)+		2,000
William S. Mailliard (R Calif.)+		2,000
James G. Martin (R N.C.)+		2,000
Hector McGeachy (D N.C.)		1,000
		1,000
Total for year		2,000
John L. McMillan (D S.C.)		2,000
		2,000
Total for year		4,000
William E. Minshall (R Ohio)+		2,000
Peter A. Peyser (R N.Y.)+		2,000
Richard G. Shoup (R Mont.)+		2,000
Ben Stone (D N.C.)		1,000
		300
Total for year		1,300
Carl A. Vergari (Cons-R N.Y.)		2,000
Charles E. Wiggins (R Calif.)+		2,000
Samuel H. Young (R Ill.)+		2,000

Additional contributions of $1,000 each to 11 Republicans and six Democrats. *(listed in 1972 Weekly Report p. 2724)*

Savings Association. The Savings Association Political Education Committee, which reports no affiliates, reported total receipts of $116,932.69, expenditures of $133,492.55—including candidate contributions of $125,539.30—and cash on hand of $13,670.93 as of Dec. 31, 1972. Upper level contributions reported after Sept. 1, 1972:

President

Vance Hartke (D)		500	10/18

Senate

Democratic Senatorial Campaign Committee		5,000	9/25
		3,000	10/30
Subtotal		8,000	
Total for year	12,000		

House

Democratic Congressional Campaign Committee		2,000	9/25
		2,500	10/4
		1,000	12/7
		2,000	10/17
		1,000	10/24
Subtotal		8,500	
Total for year	17,000		

Republican Congressional Campaign Committee		1,000	10/30
		2,500	10/4
		1,000	12/7
		1,000	10/18
Subtotal		5,500	
Total for year	11,500		
Frank J. Brasco (D N.Y.)+		1,000	9/6
Ralph S. Regula (R Ohio)+		1,000	9/27
Dan Rostenkowski (D Ill.)+		500	10/24

Other upper level contributions reported before September 1972:

President

Edmund S. Muskie (D)	1,000

Senate

Republican Senatorial Campaign Committee	6,000
Howard H. Baker Jr. (R Tenn.)+	1,000
Edward W. Brooke (R Mass.)+	2,000
Nick Gallifianakis (D N.C.)	2,000
David Pryor (D Ark.)	2,000
John Sparkman (D Ala.)+	1,000
John G. Tower (R Texas)+	1,000

House

Tom S. Gettys (D S.C.)+	1,000
Robert E. Harris (Ind. Va.)	1,000
Margaret M. Heckler (R Mass.)+	1,000
John H. Kyl (R Iowa)	1,000
John M. Murphy (D N.Y.)+	1,000
B. F. Sisk (D Calif.)+	2,000
Robert G. Stephens Jr. (D Ga.)+	1,000
Charles A. Vanik (D Ohio)+	1,000
William B. Widnall (R N.J.)+	2,000

Miscellaneous

Democratic National Dinner Committee	5,500
Democratic National Committee Festival of Stars	1,000

Labor Union Committees

AFL-CIO. The political arm of the 13.5-million-member **American Federation of Labor-Congress of Industrial Organizations** is its national Committee on Political Education (COPE). COPE reported total

receipts of $1,252,518.96, expenditures of $1,270,075.32 —including $1,200,549.95 in candidate contributions— and cash on hand of $4,125.35 as of Dec. 31, 1972. Upper level contributions reported after Sept. 7, 1972:

President			
Vance Hartke (D)		$ 2,000	10/13
		500	12/4
Total for year		2,500	
Senate			
Democratic Senatorial Campaign Committee		1,000	10/30
		5,000	10/24
		5,000	10/26
		5,000	10/26
Subtotal		16,000	
Total for year	26,000		
Joseph R. Biden Jr. (D Del.)+		5,000	9/11
		2,500	10/10
Subtotal		7,500	
Total for year	12,500		
Jack Daniels (D N.M.)		500	10/11
		5,000	10/18
Subtotal		5,500	
Total for year	10,500		
William E. (Bud) Davis (D Idaho)		5,000	10/3
Total for year	10,000		
Walter (Dee) Huddleston (D Ky.)+		5,000	9/19
		5,000	10/11
		2,500	10/30
Total for year		12,500	
Frank J. Kelley (D Mich.)		5,000	9/8
		5,000	9/2
		2,500	10/20
		750	10/24
		750	10/25
Total for year		14,000	
Lee Metcalf (D Mont.)+		3,000	10/11
Total for year	13,000		
Sam Nunn (D Ga.)+		5,000	9/18
		5,000	10/11
		2,500	10/18
Total for year		12,500	
Barefoot Sanders (D Texas)		5,000	10/11
Total for year	10,000		
John Sparkman (D Ala.)+		5,000	9/18
		250	10/25
Total for year		5,250	
William B. Spong Jr. (D Va.)		5,000	9/18
		5,000	10/18
Total for year		10,000	
Eugene N. Zeigler Jr. (D S.C.)		5,000	10/4
House			
Democratic Congressional Campaign Committee		2,500	10/30

		3,000	10/17
		1,000	10/20
		3,000	10/26
		5,500	10/3
Subtotal		15,000	
Total for year	20,000		
William R. Anderson (D Tenn.)		2,500	10/11
		2,500	10/26
Subtotal		5,000	
Total for year	10,000		
Les Aspin (D Wis.)+		2,500	9/13
		2,000	10/3
		500	10/12
Total for year		5,000	
Nick Begich (D Alaska)+		2,500	9/12
		500	9/18
		2,500	10/3
Total for year		5,500	
James H. Bilbray (D Nev.)		2,500	10/12
		2,500	9/18
Subtotal		5,000	
Total for year	7,500		
Roger Boas (D Calif.)		2,500	9/13
		2,500	10/13
Total for year		5,000	
John B. Breckinridge (D Ky.)+		2,500	9/19
		1,500	10/26
Total for year		4,000	
Hugh L. Carey (D N.Y.)+		2,500	9/18
		2,500	10/18
Total for year		5,000	
John G. Dow (D N.Y.)		2,500	10/3
		2,500	9/18
Total for year		5,000	
Eugene Gallegos (D N.M.)		2,500	9/3
		2,000	10/14
Subtotal		4,500	
Total for year	7,000		
Joseph M. Gaydos (D Pa.)+		2,500	9/13
		2,500	10/11
		1,000	10/24
Total for year		6,000	
Henry Helstoski (D N.J.)+		2,500	9/12
		2,500	10/3
		1,000	10/26
Total for year		6,000	
James J. Howard (D N.J.)+		2,500	10/13
		2,500	10/12
Total for year		5,000	
Timothy Lemucchi (D Calif.)		2,500	9/3
		2,500	10/3
Total for year		5,000	
Richard D. McCarthy (D N.Y.)		2,500	10/13
		2,500	9/18
Total for year		5,000	
Mike McCormack (D Wash.)+		2,500	9/13
		2,500	10/18
Subtotal		5,000	
Total for year	7,500		

Joseph G. Minish (D N.J.)+		2,500	9/12
		2,500	10/3
Total for year		5,000	
John M. Murphy (D N.Y.)+		2,500	10/13
		2,500	9/18
Total for year		5,000	
David R. Obey (D Wis.)+		2,500	9/13
		2,000	10/3
		500	10/18
Total for year		5,000	
Ogden R. Reid (D N.Y.)+		2,500	10/13
		2,500	9/18
Total for year		5,000	

William R. Roy (D Kan.)+		2,500	9/14
		2,100	10/3
Total for year		4,600	
James D. Ruppert (D Ohio)		2,500	9/8
		2,500	10/18
		500	10/18
Total for year		5,500	
Leo J. Ryan (D Calif.)+		2,500	9/13
		2,500	10/3
Total for year		5,000	
William F. Ryan (D N.Y.)[1]		2,000	10/5
		5,000	10/11
		3,000	10/18
		5,000	10/24
		5,000	10/27
Total for year		20,000	
Gerry E. Studds (D Mass.)+		2,500	9/20
		2,500	10/3
		1,000	10/20
		1,500	10/30
		1,000	11/3
Total for year		8,500	
Gus Yatron (D Pa.)+		2,500	9/13
		2,500	10/11
		1,000	10/24
Total for year		6,000	
Andrew Young (D Ga.)+		2,500	9/13
		2,000	10/26
Subtotal		4,500	
Total for year	6,500		

Miscellaneous

American Federation of Teachers	5,000	10/24

Other upper level contributions reported before Sept. 7, 1972:

Senate

James Abourezk (D S.D.)+	10,000
Terry M. Carpenter (D Neb.)	5,000
Ed Edmondson (D Okla.)	13,000
David H. Gambrell (D Ga.)	4,950
William D. Hathaway (D Maine)+	10,000
Byron Johnson (D Idaho)	8,000
Walter F. Mondale (D Minn.)+	5,000
Wayne Morse (D Ore.)	10,000
David L. Norvell (D N.M.)	3,500
Claiborne Pell (D R.I.)+	10,000
David Pryor (D Ark.)	5,000
Roman C. Pucinski (D Ill.)	5,000
Jennings Randolph (D W.Va.)+	5,000
Ralph W. Yarborough (D Texas)	5,000

House

Frank E. Denholm (D S.D.)+	5,000
Werner H. Fornos (D Md.)	5,000
John W. Jenrette Jr. (D S.C.)	4,000
Pat McKeever (D S.D.)	5,000
Arnold Olsen (D Mont.)	4,000
Peter W. Rodino Jr. (D N.J.)+	13,000
Ed V. Williams (D Idaho)	5,000

1 William F. Ryan died after winning primary.

Auto Workers. The Committee for Good Government of the independent **United Auto Workers** handles funds donated by staff members of the 1,485,609-member union. The agency reported total receipts of $120,881.08, expenditures of $118,513.58—including candidate contributions of $91,336.67—and cash on hand of $2,367.50 as of Dec. 31, 1972. Upper level contributions reported after Sept. 1, 1972:

President

George McGovern (D)	$ 2,500	10/19
	3,000	9/12
	3,000	9/20
	1,000	10/2
	3,000	9/11
	5,000	9/15
	2,500	9/20
	2,500	9/20
	3,000	9/21
	5,000	9/27
	3,000	10/5
	2,842	9/6
	1,900	10/10
	2,289.75	10/4
	3,000	11/1
	2,600	11/29
	2,253.05	12/12

		150	12/14
		3,000	10/30
		2,569.61	12/27
Subtotal		54,104.41	
Total for year 2	101,104.41		

Other upper level contributions reported before Sept. 1, 1972:

Senate

James Abourezk (D S.D.)+	4,000
Byron Johnson (D Idaho)	12,000

2 McGovern total includes $45,000 loan of Aug. 21, 1972.

Auto Workers. The Voluntary Community Action Program of the **United Auto Workers** (UAW-V-CAP) reported total receipts of $471,370.21, expenditures of $891,332.48—including candidate contributions of $580,166.72—and cash on hand of $246,596.36 as of Dec. 31, 1972. It reported $90,000 in outstanding loans owed by Democratic presidential nominee George McGovern as of that date. Upper level contributions reported after Sept. 1, 1972:

President

George McGovern (D)		$ 1,500	10/7
		5,000	10/7
		2,050	10/7
		25,000	9/15
		2,000	10/12
		1,250	9/11
		1,000	10/2
		1,300	10/12
		541	9/26
Subtotal		39,641	
Total for year 3	206,141		

Senate

Democratic Senatorial Campaign Committee		2,000	10/19

James Abourezk (D S.D.)+		1,000	10/25
		3,000	9/18
Total for year		4,000	
Joseph R. Biden Jr. (D Del.)+		500	10/17
		1,000	9/6
Total for year		1,500	
Ray Blanton (D Tenn.)		3,000	9/13
Total for year	4,000		
Clifford P. Case (R N.J.)+		2,500	10/2
Dick Clark (D Iowa)+		740	9/13
		2,000	9/25
Subtotal		2,740	
Total for year	7,240		
Daniel S. Cooper (D Mich.)		5,000	11/3
Ed Edmondson (D Okla.)		1,000	10/10
Floyd K. Haskell (D Colo.)+		500	11/12
		500	12/2
		1,000	10/17
Total for year		2,000	
Walter (Dee) Huddleston (D Ky.)+		10,000	9/1
		600	9/13
		9,000	9/20
		5,000	9/20
Total for year		24,600	
Frank J. Kelley (D Mich.)		20,000	10/4
		500	10/12
Subtotal		20,500	
Total for year	21,500		
Paul J. Krebs (D N.J.)		1,000	10/17
		1,014	10/23
		2,500	10/2
		1,000	10/12
Total for year		5,514	
Thomas J. McIntyre (D N.H.)+		2,000	10/24
		2,000	9/19
Total for year		4,000	
Lee Metcalf (D Mont.)+		1,500	9/18
Total for year	4,499		
Walter F. Mondale (D Minn.)+		5,000	9/18
Wayne L. Morse (D Ore.)		5,000	9/22
Sam Nunn (D Ga.)+		500	10/17
		2,000	10/15
Total for year		2,500	
Claiborne Pell (D R.I.)+		1,000	9/19
Total for year	2,000		
Charles H. Percy (R Ill.)+		3,200	9/15
Total for year	6,300		
Jennings Randolph (D W.Va.)+		1,000	9/22
Barefoot Sanders (D Texas)		2,000	10/19
		1,000	10/3
Total for year		3,000	

House

William R. Anderson (D Tenn.)		2,500	9/13
Total for year	3,500		
Les Aspin (D Wis.)+		1,000	9/18
		500	9/18
		1,000	10/25
Total for year		2,500	
John Brademas (D Ind.)+		1,000	9/20
		50	10/12
Total for year		1,050	
M. Robert Carr (D Mich.)		10,000	10/4
		2,000	11/1
		2,500	11/20
Total for year		14,500	

James C. Corman (D Calif.)+		1,250	10/3
		500	10/5
Total for year		1,750	
John W. Davis (D Ga.)+		1,500	10/9
William D. Ford (D Mich.)+		5,000	11/3
Donald M. Fraser (D Minn.)+		500	9/18
		1,000	9/18
Total for year		1,500	
Richard Fulton (D Tenn.)+		1,500	9/13
Total for year	2,500		
Ella T. Grasso (D Conn.)+		1,000	10/6
		500	9/19
		2,500	10/6
		150	10/2
Total for year		4,150	
Bennie D. Graves (D Mich.)		1,450	9/19
William J. Green (D Pa.)+		750	9/27
		500	10/5
Total for year		1,250	
Jerome T. Hart (D Mich.)		12,000	9/19
Charles William Jameson (D Mich.)		3,600	9/19
		2,400	10/6
Total for year		6,000	
Dennis J. Kucinich (D Ohio)		1,000	9/27
		1,000	9/27
Subtotal		2,000	
Total for year	3,000		
Anthony P. Lo Russo (D Lib. N.Y.)		1,000	10/12
		750	10/5
Total for year		1,750	
Richard D. McCarthy (D Lib. N.Y.)		1,500	10/12
		2,000	10/2
		500	9/27
Total for year		4,000	
Jean McKee (D Mich.)		5,600	9/19
Virgil L. Musser (D Ohio)		1,000	9/27
		1,000	9/27
Total for year		2,000	
James G. O'Hara (D Mich.)+		1,000	11/13
		100	10/2
Subtotal		1,100	
Total for year	1,600		
Larry H. Olson (D Mich.)		2,000	9/19
Donald W. Riegle Jr. (R Mich.)+ [4]		4,000	10/12
Total for year	5,000		
J. Edward Roush (D Ind.)+		1,000	9/20
		100	10/12
Subtotal		1,100	
Total for year	3,600		
James D. Ruppert (D Ohio)		2,000	9/20
		1,500	9/22
Subtotal		3,500	
Total for year	4,500		
John F. Seiberling (D Ohio)+		1,000	9/27
		1,000	9/27
Total for year		2,000	

Philip R. Sharp (D Ind.)		2,500	9/20
		500	9/20
Total for year		3,000	
Marvin R. Stempien (D Mich.)		5,000	11/13
Total for year	6,000		
James Stewart (D Calif.)		1,000	11/1
		750	9/26
Total for year		1,750	
Walter Thoresen (D Wis.)		1,500	10/25
Charles A. Vanik (D Ohio)+		1,500	9/27
		1,000	9/27
Total for year		2,500	

Contributions of $1,000 each went to 21 Democrats. Other upper level contributions reported before Sept. 1, 1972:

President

Hubert H. Humphrey (D)	1,000
Edmund S. Muskie (D)	26,595

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Senate

John Bolt Culbertson (D S.C.)	1,000
William D. Hathaway (D Maine)+	2,500
Byron Johnson (D Idaho)	1,430
Jed Johnson (D Okla.)	1,000
David Pryor (D Ark.)	4,999

House

John B. Breckinridge (D Ky.)+	1,000
Mendel J. Davis (D S.C.)+	1,000
Allard K. Lowenstein (Lib. N.Y.)	1,000
Ray J. Madden (D Ind.)+	3,000
Lucien N. Nedzi (D Mich.)+	4,000

Miscellaneous

Democratic Study Group	4,999

3 McGovern total includes $90,000 remaining balance from loan of $135,000 Aug. 21, 1972.
4 Riegle switched to Democratic Party Feb. 27, 1973.

Carpenters. The Carpenters Legislative Improvement Committee of the 820,000-member **United Brotherhood of Carpenters & Joiners of America, AFL-CIO,** reported total receipts of $98,863.19, expenditures of $127,490.21—including candidate contributions of $108,950—and cash on hand of $14,194.43 as of Dec. 31, 1972. Upper level contributions reported after Sept. 5, 1972:

Senate

Republican Senatorial Campaign Committee		$1,000	10/6
Jack Daniels (D N.M.)		500	9/28
William E. (Bud) Davis (D Idaho)		500	10/12
Nick Galifianakis (D N.C.)		500	10/6
Floyd K. Haskell (D Colo.)+		500	11/12
Barefoot Sanders (D Texas)		1,000	10/16
		1,000	10/25
Total for year		2,000	
Ted Stevens (R Alaska)+		500	10/6
Total for year	1,500		

House

Democratic Congressional Campaign Committee		1,500	10/24
		1,000	10/26
Subtotal		2,500	
Total for year	6,200		
Robert L. Leggett (D Calif.)+		500	10/26
Total for year	1,000		

Contributions of $500 each went to 15 Democrats.

Miscellaneous

Republican National Committee		1,500	9/28

Other upper level contributions reported before Sept. 6, 1972:

Senate

James Abourezk (D S.D.)+	1,500
J. Caleb Boggs (R Del.)	1,750
Edward W. Brooke (R Mass.)+	1,000
Clifford P. Case (R N.J.)	1,000
Ed Edmondson (D Okla.)	1,500
David H. Gambrell (D Ga.)	1,000
Lee Metcalf (D Mont.)+	2,000
Walter F. Mondale (D Minn.)+	2,000
Claiborne Pell (D R.I.)+	1,500
David Pryor (D Ark.)	2,000
Jennings Randolph (D W.Va.)+	1,000
John Sparkman (D Ala.)+	1,000

House

William R. Anderson (D Tenn.)	1,000
Dominick V. Daniels (D N.J.)+	1,000
James J. Delaney (D N.Y.)+	1,000
William D. Ford (D Mich.)+	1,500
Wayne L. Hays (D Ohio)+	1,000
John J. Rooney (D N.Y.)+	1,000

Miscellaneous

Democratic Dinner Committee	2,000
Republican Convention Gala '72	2,000

Communications Workers. The Committee on Political Education of the 421,000-member **Communications Workers of America, AFL-CIO**, reported total receipts of $280,022.94, expenditures of $254,468.59—including candidate contributions of $138,680.95—and cash on hand of $52,446.19 as of Dec. 31, 1972. Major contributions reported after Sept. 1, 1972:

President

Vance Hartke (D)		$ 500	12/5
George McGovern (D)		90,000	10/26
		1,000	9/22
		5,000	9/29
		500	9/29
		1,000	10/13
		1,000	10/10
Subtotal		98,500	
Total for year 5	223,500		

Senate

Joseph R. Biden Jr. (D Del.)+	3,000	10/6
William E. (Bud) Davis (D Idaho)	1,000	10/10
Walter (Dee) Huddleston (D Ky.)+	800	10/5
Frank J. Kelley (D Mich.)	500	10/31
	1,000	10/11
Total for year	1,500	
Sam Nunn (D Ga.)+	1,000	9/22
Barefoot Sanders (D Texas)	500	11/3
	500	10/5
	3,000	10/10
Total for year	4,000	
William B. Spong Jr. (D Va.)	1,000	10/3

House

Bill D. Burlison (D Mo.)+	750	10/5
Robert W. Kastenmeier (D Wis.)+	600	9/19
Mike McCormack (D Wash.)+	500	10/19
	500	10/5
Total for year	1,000	
Wayne Owens (D Utah)+	1,000	10/5
William R. Roy (D Kan.)+	1,000	10/5
James W. Symington (D Mo.)+	750	10/5

Contributions of $500 each went to 38 Democrats and one Republican, C. W. Bill Young (Fla.).

Other upper level contributions reported before Sept. 1, 1972:

President

Hubert H. Humphrey (D)	7,000

Senate

David Pryor (D Ark.)	1,000
Ralph W. Yarborough (D Texas)	6,750

5 McGovern total includes $100,000 loan balance from Aug. 25, 1972.

Garment Workers. The Campaign Committee of the 442,333-member **International Ladies' Garment Workers Union, AFL-CIO**, reported total receipts of $1,468,187.35, expenditures of $603,230.42—including candidate contributions of $344,738.79—and cash on hand of $864,956.94 as of Dec. 31, 1972. Upper level contributions reported after Sept. 1, 1972:

President

George McGovern (D)		$ 1,500	9/*
		500	9/21
		25,000	10/17
		5,000	10/16
		5,000	10/16
		1,000	10/19
		1,200	10/17
		25,000	11/3
Total for year		64,200	

Senate

Joseph R. Biden Jr. (D Del.)+		2,000	10/30
Total for year	3,000		
Clifford P. Case (R N.J.)+		2,000	9/25
William B. Spong Jr. (D Va.)		1,500	9/5

House

Richard Bolling (D Mo.)+		500	9/25
Bob Casey (D Texas)+		1,000	10/4
Clarence D. Long (D Md.)+		500	9/*

Other upper level contributions reported before September 1972:

President

Hubert H. Humphrey (D)	15,750

Senate

Democratic Senatorial Campaign Committee	2,500
James Abourezk (D S.D.)+	1,500
Ray Blanton (D Tenn.)	1,500
Dick Clark (D Iowa)+	1,500
Jack Daniels (D N.M.)	1,500
William E. (Bud) Davis (D Idaho)	1,500
Ed Edmondson (D Okla.)	1,500
Walter (Dee) Huddleston (D Ky.)+	1,500
Frank J. Kelley (D Mich.)	2,000
Lee Metcalf (D Mont.)+	2,500
Walter F. Mondale (D Minn.)+	3,000
Wayne Morse (D Ore.)	2,000
Claiborne Pell (D R.I.)+	3,800
Barefoot Sanders (D Texas)	3,000
Eugene N. Zeigler (D S.C.)	3,500

House

Dominick V. Daniels (D N.J.)+	500
Peter W. Rodino Jr. (D N.J.)+	500
Gerry E. Studds (D Mass.)+	1,000

* *No other date reported.*

Laborers. The Laborers Political League of the 580,000-member **Laborers' International Union, AFL-CIO**, reported total receipts of $221,242.16, expenditures of $178,889.47—all listed as candidate contributions—and cash on hand of $198,605.73 as of Dec. 31, 1972. Leading contributions reported after Sept. 7, 1972:

President

Richard M. Nixon (R)+		$ 25,000	11/2

Senate

Democratic Senatorial Campaign Committee		2,000	10/26
Total for year	3,500		
James Abourezk (D S.D.)+		1,000	9/13
Ray Blanton (D Tenn.)		1,000	9/22
J. Caleb Boggs (R Del.)		1,000	10/12
Jack Daniels (D N.M.)		1,000	10/25
		1,000	9/13
Total for year		2,000	
William E. (Bud) Davis (D Idaho)		1,000	9/13
Floyd K. Haskell (D Colo.)+		1,000	10/12
William D. Hathaway (D Maine)+		1,000	10/12
Frank J. Kelley (D Mich.)		1,000	10/12
John J. McKeithen (Ind. La.)		2,000	10/18

Sam Nunn (D Ga.)+		1,000	10/12
Claiborne Pell (D R.I.)+		1,000	10/26
Barefoot Sanders (D Texas)		1,000	10/12
John Sparkman (D Ala.)+		1,000	9/25
House			
Democratic Congressional Campaign Committee		2,000	10/12
Total for year	4,000		
Republican Congressional Committee		4,000	10/2
Frank Annunzio (D Ill.)+		1,000	9/13
		1,000	10/10
Total for year		2,000	
John A. Blatnik (D Minn.)+		1,000	10/10
Jack E. Brown (D Ariz.)		1,000	10/17
Hugh L. Carey (D N.Y.)+		1,000	9/13
Dominick V. Daniels (D N.J.)+		1,000	9/25
Daniel J. Flood (D Pa.)+		1,000	10/18
William Lehman (D Fla.)+		2,000	10/26
		500	10/26
Total for year		2,500	
Spark M. Matsunaga (D Hawaii)+		1,000	10/18
James G. O'Hara (D Mich.)+		1,000	9/13
Frank Thompson Jr. (D N.J.)+		2,000	9/12
Leo Weissenborn (D Fla.)		2,000	9/25
Total for year	4,500		
Ted Wyckoff (D Ariz.)		1,000	10/17

Other upper level contributions reported before Sept. 7, 1972:

Senate	
Dick Clark (D Iowa)+	2,000
Ed Edmondson (D Okla.)	2,000
Lee Metcalf (D Mont.)+	2,000
Walter F. Mondale (D Minn.)+	2,000
Wayne Morse (D Ore.)	1,000
William B. Spong Jr. (D Va.)	1,000
Ted Stevens (R Alaska)+	1,000
House	
Roger Boas (D Calif.)	2,000
George E. Brown Jr. (D Calif.)+	2,000
James C. Corman (D Calif.)+	1,000
George E. Danielson (D Calif.)+	1,000
John H. Dent (D Pa.)+	1,000
Dante B. Fascell (D Fla.)+	1,500
Sam Gibbons (D Fla.)+	1,000
Richard T. Hanna (D Calif.)+	2,000
Joseph E. Karth (D Minn.)+	1,000

Arnold Olsen (D Mont.)		1,000	
Claude Pepper (D Fla.)+		1,000	
John J. Rooney (D N.Y.)+		1,000	
Leo J. Ryan (D Calif.)+		2,000	

Machinists. The Machinists Non-Partisan Political League of the 865,490-member **International Association of Machinists and Aerospace Workers, AFL-CIO**, reported total receipts of $319,171.84, expenditures of $375,816.93—including candidate contributions of $253,703.18—and cash on hand of $189,159.95 as of Dec. 31, 1972. Upper level contributions reported after Sept. 1, 1972:

President			
George McGovern (D)		$ 2,500	9/20
		1,000	9/22
		5,000	9/25
		1,000	9/25
		5,000	9/25
		1,000	9/25
		500	9/28
		1,000	9/28
		2,000	9/28
		1,000	9/28
		1,000	9/28
		5,000	9/29
		1,000	10/10
		1,000	10/10
		750	10/10
		1,000	10/10
		500	10/10
		100,000	10/10
		1,000	10/12
		500	10/12
		500	10/26
		5,000	10/26
		500	10/26
		1,000	10/27
		2,000	11/1
		2,000	11/1
		2,000	11/1
		2,000	11/1
		2,000	11/1
		4,000	11/1
		2,000	11/1
		3,400	11/1
		2,100	11/1
		1,000	11/1
		2,200	12/4
Subtotal		164,350	
Total for year[6]	294,350		

Senate

James Abourezk (D S.D.)+		1,000	12/8
Total for year	2,000		
Joseph R. Biden Jr. (D Del.)+		1,000	11/16
		1,000	10/26
		1,000	9/25
Total for year		3,000	
Roy Blanton (D Tenn.)		500	12/18
		1,000	9/25
Total for year		1,500	
Edward W. Brooke (R Mass.)+		1,000	10/12
Terry M. Carpenter (D Neb.)		1,000	10/12
Clifford P. Case (R N.J.)+		5,000	10/12
Dick Clark (D Iowa)+		2,000	12/4
		2,500	10/17
		3,500	9/22
Subtotal		8,000	
Total for year	12,000		
William E. (Bud) Davis (D Idaho)		1,000	10/26
Total for year	2,500		
Ed Edmondson (D Okla.)		1,200	9/25
Floyd K. Haskell (D Colo.)+		500	12/4
		1,000	10/10
Total for year		1,500	
Walter (Dee) Huddleston (D Ky.)+		3,000	9/28
Frank J. Kelley (D Mich.)		2,800	9/28
		200	9/25
Total for year		3,000	
Walter F. Mondale (D Minn.)+		5,000	9/25
Wayne Morse (D Ore.)		2,000	9/25
Claiborne Pell (D R.I.)+		2,000	9/28
		1,000	10/4
		200	9/25
Total for year		3,200	
Barefoot Sanders (D Texas)		5,000	9/25
John Sparkman (D Ala.)+		1,000	10/17
		1,500	9/28
		200	9/25
Total for year		2,700	

House

Les Aspin (D Wis.)+		1,000	9/25
		500	10/10
Total for year		1,500	
Robert J. Cornell (D Wis.)		1,000	10/10
Ella T. Grasso (D Conn.)+		2,000	9/27
John Hampelmann (D Wash.)		1,000	11/1
		250	10/10
Total for year		1,250	
Andrew Jacobs Jr. (D Ind.)		1,000	10/17
Robert W. Kastenmeier (D Wis.)+		500	9/25
		500	10/10
Total for year		1,000	
Dennis J. Kucinich (D Ohio)		500	10/17
		500	9/28
Total for year		1,000	

Richard D. McCarthy (D-L N.Y.)		2,000	9/28
Mike McCormack (D Wash.)+		1,000	11/1
		500	10/13
Total for year		1,500	
Alan Merson (D Colo.)		1,000	10/10
Edward Mezvinsky (D Iowa)+		500	11/1
		1,000	9/22
Total for year		1,500	

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Harold O. Miller (D Va.)		1,000	9/25
David R. Obey (D Wis.)+		1,000	9/25
Ogden R. Reid (D N.Y.)+		1,000	9/28
Patricia Schroeder (D Colo.)+		1,000	10/10
Howard B. Sompayrac Jr. (D Tenn.)		750	10/27
		250	9/25
Subtotal		1,000	
Total for year	1,750		
Leonor K. Sullivan (D Mo.)+		1,000	10/5
James Stewart (D Calif.)		1,000	9/25
Gerry E. Studds (D Mass.)+		500	9/28
		500	9/25
Subtotal		1,000	
Total for year	1,500		
James W. Symington (D Mo.)+		1,000	9/28
Walter Thoresen (D Wis.)		1,000	10/10
Charles A. Vanik (D Ohio)+		500	9/28
		1,000	10/4
Total for year		1,500	

Miscellaneous

Democratic Study Group	1,000	9/25
	5,000	10/31
Total for year	6,000	
Concerned Seniors for Better Government	2,500	10/10

Other upper level contributions reported before Sept. 1,1972:

Senate

Jack Daniels (D N.M.)	1,000
William D. Hathaway (D Maine)+	2,000
Lee Metcalf (D Mont.)+	1,000
David L. Norvell (D N.M.)	1,000
David Pryor (D Ark.)	3,000
Roman C. Pucinski (D Ill.)	1,000
Ralph W. Yarborough (D Texas)	1,000

House

Democratic Congressional Dinner Committee	3,100
Dominick V. Daniels (D N.J.)+	1,000
William E. (Bud) Davis (D Idaho)	1,500

Werner H. Fornos (D Md.)		800	
Michael J. Harrington (D Mass.)+		1,300	
Peter W. Rodino Jr. (D N.J.)+		1,000	
Miscellaneous			
Democratic National Committee		5,250	

6 McGovern total includes $100,000 loan balance from Aug. 30, 1972.

Marine Engineers. The Marine Engineers Beneficial Association Political Action Committee reported total receipts of $170,573.75, expenditures of $145,946.89 —including candidate contributions of $96,630—and cash on hand of $24,626.86 as of Dec. 31, 1972. Upper level contributions reported after Sept. 1972:

Senate			
Democratic Senatorial Campaign Committee		$10,000	10/7
Republican Senatorial Campaign Committee		2,500	10/11
Howard H. Baker Jr. (R Tenn.)+		1,500	10/12
Lee Metcalf (D Mont.)+		5,000	10/11
Ted Stevens (R Alaska)+		2,500	10/11
House			
Republican Congressional Campaign Committee		6,000	10/11
John B. Anderson (R Ill.)+		2,500	10/11
William R. Anderson (D Tenn.)		1,500	10/11
Mark Andrews (R N.D.)+		1,000	10/11
Phillip Burton (D Calif.)+		1,500	10/11
Frank M. Clark (D Pa.)+		1,000	10/13
John D. Dingell (D Mich.)+		1,000	10/11
Thomas N. Downing (D Va.)+		1,000	10/12
Thaddeus J. Dulski (D N.Y.)+		1,500	10/11
Gerald R. Ford (R Mich.)+		2,500	10/11
William D. Ford (D Mich.)+		1,000	10/11
James R. Grover Jr. (R N.Y.)+		1,000	10/12
John Hempelmann (D Wash.)		1,000	10/13
Total for year	3,000		
William S. Mailliard (R Calif.)+		2,500	10/11
Lloyd Meeds (D Wash.)+		1,000	10/11
George E. Shipley (D Ill.)+		1,000	10/11
Morris K. Udall (D Ariz.)+		1,000	10/13
Miscellaneous			
AFL-CIO COPE		2,500	10/11

Other upper level contributions reported before Sept. 1972:

Vice President			
Spiro T. Agnew (R)+		1,500	
House			
John J. Rooney (D N.Y.)+		5,000	

Marine Engineers. The Marine Engineers Beneficial Association Retirees Group Fund reported total receipts of $208,650.67, expenditures of $40,670.25 and cash on hand of $452,562.82 as of Dec. 31, 1972. No campaign contributions were listed.

Railway Clerks. The Railway Clerks Political League of the 275,000-member **Brotherhood of Railway, Airline and Steamship Clerks, AFL-CIO**, reported total receipts of $287,125.05, expenditures of $268,491.03 —including $58,800 in contributions—and cash on hand of $18,967.49 as of Dec. 31, 1972. Upper level contributions reported after Sept. 1, 1972:

President			
Vance Hartke (D)		$ 5,000	12/11
Total for year [7]	10,000		
Hubert H. Humphrey (D)		1,000	10/3
Total for year	2,500		
George McGovern (D)		5,000	9/25
Richard M. Nixon (R)+		5,000	10/26
		5,000	10/3
Total for year		10,000	
Senate			
Walter (Dee) Huddleston (D Ky.)+		1,000	9/25
Jennings Randolph (D W.Va.)+		1,000	9/25
Ralph W. Yarborough (D Texas)		1,000	9/25
House			
John D. Dingell (D Mich.)+		1,000	9/25

Joshua Eilberg (D Pa.)+	1,000	9/25
Sam Gibbons (D Fla.)+	1,000	9/25
Jim Goodrich (D Ohio)	1,000	9/25
Peter N. Kyros (D Maine)+	1,000	10/19
John M. Murphy (D N.Y.)+	1,000	9/25
Robert O. Tiernan (D R.I.)+	1,000	9/25

Other upper level contributions reported before Sept. 1,1972:

Senate

Democratic Senatorial Campaign Committee	1,000
James Abourezk (D S.D.)+	3,000
Joseph R. Biden Jr. (D Del.)+	1,000
Ray Blanton (D Tenn.)	1,000
Edward W. Brooke (R Mass.)+	1,000
Clifford P. Case (R N.J.)+	1,000
Dick Clark (D Iowa)+	1,000
Jack Daniels (D N.M.)	1,000
Ed Edmondson (D Okla.)	1,000
William D. Hathaway (D Maine)+	1,000
Byron Johnson (D Idaho)	1,000
Lee Metcalf (D Mont.)+	1,000
Walter F. Mondale (D Minn.)+	2,000
Robert A. Mondragon (D N.M.)	1,000
Wayne Morse (D Ore.)	1,000
David L. Norvell (D N.M.)	2,000
James B. Pearson (R Kan.)+	1,000
Claiborne Pell (D R.I.)+	1,000
David Pryor (D Ark.)	2,000
Roman C. Pucinski (D Ill.)	1,000
John Sparkman (D Ala.)+	1,000
William B. Spong Jr. (D Va.)	1,000
Ted Stevens (R Alaska)+	1,000

House

Republican Congressional Booster Club	1,000
Frank Annunzio (D Ill.)+	1,000
Stanley W. Beetham (D Ill.)	1,000
John J. Houlihan (D Ill.)	1,000
Abner J. Mikva (D Ill.)	1,000
W. S. (Bill) Stuckey (D Ga.)+	1,000

Miscellaneous

Democratic National Committee Festival of Stars	1,000

7 Hurthe figure carried under Senate previously.

Retail Clerks. The Active Ballot Club of the 605,000-member **Retail Clerks International Union, AFL-CIO**, reported total receipts of $197,882.45, expenditures of $239,449.75—including candidate contributions of $156,196—and cash on hand of $98,990.75 as of Dec. 31, 1972. Major contributions reported after Sept. 1, 1972:

President

George McGovern (D)	$ 1,000	10/6
	800	10/6
	1,000	10/6
	500	10/10
	1,000	10/20
Subtotal	4,300	
Total for year [8]	71,800	

Senate

James Abourezk (D S.D.)+	2,500	10/10
Joseph R. Biden Jr. (D Del.)+	1,000	10/27
	2,000	11/15
Total for year	3,000	
Dick Clark (D Iowa)+	1,000	11/1
	2,000	9/29
Total for year	3,000	
Jack Daniels (D N.M.)	2,000	10/16
William E. (Bud) Davis (D Idaho)	2,000	9/29
Ed Edmondson (D Okla.)	3,500	10/20
Walter (Dee) Huddleston (D Ky.)+	2,000	10/16
Frank J. Kelley (D Mich.)	5,000	10/10
Thomas J. McIntyre (D N.H.)+	2,000	10/20
Lee Metcalf (D Mont.)+	2,000	10/16
Walter F. Mondale (D Minn.)+	2,500	10/27
Sam Nunn (D Ga.)+	2,000	9/29
Claiborne Pell (D R.I.)+	3,500	9/29
Barefoot Sanders (D Texas)	3,500	10/16
John Sparkman (D Ala.)+	2,000	10/27
	2,000	12/1
Total for year	4,000	
Mike M. Vinich (D Wyo.)	2,000	9/29

House

Nick Begich (D Alaska)+	500	11/22
	500	10/10
Total for year	1,000	
John H. Dent (D Pa.)+	750	11/15

Fifty-four contributions of $500 each went to Democrats.

Other upper level contributions reported before Sept. 1, 1972:

President

Hubert H. Humphrey (D)	10,000

Senate

David Pryor (D Ark.)	4,000
Ralph W. Yarborough (D Texas)	2,000

House

Michael Galasso (D Ill.)	1,000
Ray J. Madden (D Ind.)+	1,000

8 McGovern total includes $67,500 remaining balance Dec. 31, 1972, from loan of $75,000 Sept. 1, 1972.

Seafarers. The Seafarers Political Action Donation of the 80,250-member **Seafarers International Union, AFL-CIO**, reported total receipts of $244,012.56, expenditures of $305,711.27—including candidate contributions of $258,550—and cash on hand of $19,398.29 as of Dec. 31, 1972. The committee reported it owed debts of $100,000 on that date. Upper level contributions reported after Sept. 1, 1972:

President

Vance Hartke (D)		$ 1,000	12/12
Hubert H. Humphrey (D)		1,000	9/19
Total for year	6,000		
Richard M. Nixon (R)+		100,000	11/2

Senate

Democratic Senatorial Campaign Committee		3,000	10/4
		2,000	10/13
		7,500	11/3
Total for year		12,500	
Joseph R. Biden Jr. (D Del.)+		1,000	9/8
		2,000	9/19
		1,000	11/3
Total for year		4,000	
Dick Clark (D Iowa)+		2,000	10/4
		2,000	11/3
Total for year		4,000	
Ed Edmondson (D Okla.)		1,000	10/10
Floyd K. Haskell (D Colo.)+		1,000	10/26
Frank J. Kelley (D Mich.)		2,000	10/4
		2,000	11/3
Total for year		4,000	
John J. McKeithen (Ind La.)		2,500	10/17
Walter F. Mondale (D Minn.)+		1,500	11/4
Jennings Randolph (D W.Va.)+		1,000	11/3
Barefoot Sanders (D Texas)		1,000	11/1
William B. Spong Jr. (D Va.)		1,000	9/8

House

Democratic Congressional Campaign Committee		1,000	9/12
		3,500	9/19
		1,000	9/25
Total for year		5,500	
Democratic Congressional Dinner Committee		5,000	9/8
Total for year	6,000		

Republican Congressional Campaign Committee		1,500	10/10
William A. Barrett (D Pa.)+		1,000	9/12
Ella T. Grasso (D Conn.)+		500	9/8
		500	9/25
Total for year		1,000	
Torbert H. Macdonald (D Mass.)+		1,000	9/8
John M. Murphy (D N.Y.)+		1,000	10/10
John J. Rooney (D N.Y.)+		4,593	12/13
Total for year	7,593.16		
Dan Rostenkowski (D Ill.)+		1,000	9/12
Priscilla Ryan (L N.Y.)		1,000	10/26

Other upper level contributions reported before September 1972:

President

Wilbur D. Mills (D)	2,250

Senate

Ray Blanton (D Tenn.)	1,500
Allen J. Ellender (D La.)[9]	10,000

House

Joseph P. Addabbo (D N.Y.)+	1,000
Hugh L. Carey (D N.Y.)+	2,000
Emanuel Celler (D N.Y.)	3,000
Dominick V. Daniels (D N.J.)+	1,000
James J. Delaney (D N.Y.)+	2,000
Thomas N. Downing (D Va.)+	2,000
Gillis W. Long (D La.)+	2,000
Thomas P. O'Neill Jr. (D Mass.)+	2,500
Peter W. Rodino Jr. (D N.J.)+	1,000

9 Ellender died July 27, 1972.

Steel Workers. The Political Action Committee of the **United Steel Workers of America**, with 1,200,000 members the largest AFL-CIO union, reported total receipts of $275,079.90, expenditures of $401,206.96—including candidate contributions of $364,400—and cash on hand of $83,558.73 as of Dec. 31, 1972. Major contributions reported after Sept. 1, 1972:

President

Vance Hartke (D)		$1,500	12/13

Senate

James Abourezk (D S.D.)+		2,500	9/6
Total for year	5,000		
Joseph R. Biden Jr. (D Del.)+		3,000	10/4
		2,000	10/31
Total for year		5,000	

Jack Daniels (D N.M.)		1,000	10/5
		1,500	11/1
Total for year		2,500	
William E. (Bud) Davis (D Idaho)		1,000	11/1
		2,000	10/17
Total for year		3,000	
Ed Edmondson (D Okla.)		4,000	10/14
Total for year	5,000		
Floyd K. Haskell (D Colo.)+		2,000	11/1
		2,000	10/9
Total for year		4,000	
Walter (Dee) Huddleston (D Ky.)+		2,000	11/1
		3,000	10/4
Total for year		5,000	
Byron Johnson (D Idaho)		2,500	9/6
Total for year	5,000		
Frank J. Kelley (D Mich.)		4,000	10/31
		4,000	10/12
Total for year		8,000	
Lee Metcalf (D Mont.)+		2,500	9/6
Total for year	5,000		
Wayne Morse (D Ore.)		2,500	10/19
		2,500	10/5
Total for year		5,000	
Roman C. Pucinski (D Ill.)		2,500	10/5
Jennings Randolph (D W.Va.)+		1,000	10/4
John Sparkman (D Ala.)+		1,000	10/31

House

Frank Annunzio (D Ill.)+		2,500	10/5
Les Aspin (D Wis.)+		1,000	10/31
		1,500	10/4
Total for year		2,500	
George E. Brown Jr. (D Calif.)+		1,000	11/1
		2,500	9/6
Total for year		3,500	
Jack E. Brown (D Ariz.)		2,000	11/1
Ben L. Erdreich (D Ala.)		2,000	11/1
		2,000	10/12
		1,000	10/2
Total for year		5,000	
Werner H. Fornos (D Md.)		1,000	10/31
		1,500	9/6
Total for year		2,500	
Eugene Gallegos (D N.M.)		2,500	11/1
		1,500	10/5
Total for year		4,000	
Joseph M. Gaydos (D Pa.)+		1,500	11/1
		2,000	10/5
Total for year		3,500	

James W. Goodrich (D Ohio)		1,500	10/31
Martha W. Griffiths (D Mich.)+		1,500	11/3
James M. Hanley (D N.Y.)+		2,000	10/19

John Hempelmann (D Wash.)		1,500	10/27
John J. Houlihan (D Ill.)		1,500	10/5
		1,000	10/5
Total for year		2,500	
John W. Jenrette Jr. (D S.C.)		2,000	10/31
Dennis J. Kucinich (D Ohio)		1,500	10/27
Total for year	3,000		
K. Gunn McKay (D Utah)+		1,500	10/19
		1,000	10/5
Total for year		2,500	
Patrick McKeever (D S.D.)		1,000	11/1
		2,000	10/12
Total for year		3,000	
Abner J. Mikva (D Ill.)		2,500	10/5
Thomas E. Morgan (D Pa.)+		2,000	11/3
David R. Obey (D Wis.)+		1,000	10/31
		1,500	10/4
Total for year		2,500	
Robert Reveles (D Ariz.)		1,000	10/4
		1,500	10/19
Total for year		2,500	
Ernest Z. Robles (D Calif.)		1,500	10/17
Harold Runnels (D N.M.)+		1,000	11/1
		1,000	10/5
Total for year		2,000	
Ted Wyckoff (D Ariz.)		1,000	11/1
		2,500	10/17
Total for year		3,500	
Gus Yatron (D Pa.)+		1,500	10/5

Additional contributions of $1,000 each went to 43 Democrats and one Republican, Paul N. McCloskey Jr. (Calif.).

Other upper level contributions reported before Sept. 1, 1972:

President

Hubert H. Humphrey (D)	32,433.25

Senate

Dick Clark (D Iowa)+	1,200
Walter F. Mondale (D Minn.)+	2,500
David L. Norvell (D N.M.)	4,000
Claiborne Pell (D R.I.)+	2,500
David Pryor (D Ark.)	5,500

House

Frank E. Evans (D Colo.)+	1,500
Andrew Jacobs Jr. (D Ind.)	1,500
Ray J. Madden (D Ind.)+	5,500
Arnold Olsen (D Mont.)	2,500
Wayne Owens (D Utah)+	1,500
Frank Thompson Jr. (D N.J.)+	1,500
Ed V. Williams (D Idaho)	1,500

Miscellaneous

Democratic National Committee			
Festival of the Stars		4,000	
Democratic Telethon		1,500	

Teamsters. The independent **International Brotherhood of Teamsters**, nation's largest union with more than 1,700,000 members, reported through its national political arm, the Democratic, Republican and Independent Voter Education Committee (DRIVE), receipts of $103,257.77, expenditures of $157,112.05—including candidate contributions of $149,547.05—and cash on hand of $7,312.34 as of Dec. 31, 1972. Top contributions reported after Sept. 6, 1972:

President

Richard M. Nixon (R)+		$ 5,000	10/24
Total for year	6,000		

Senate

Democratic Senatorial Campaign Committee		2,000	10/20
James Abourezk (D S.D.)+		1,000	10/11
Total for year	3,000		
Joseph R. Biden Jr. (D Del.)+		1,000	10/11
Dick Clark (D Iowa)+		1,000	9/8
		1,000	10/11
Subtotal		2,000	
Total for year	3,000		
Jack Daniels (D N.M.)		1,000	10/11
Nick Galifianakis (D N.C.)		1,000	10/11
Mark O. Hatfield (R Ore.)+		2,000	9/20
Total for year	3,000		
Frank J. Kelley (D Mich.)		2,500	10/18
Total for year	7,500		
Walter F. Mondale (D Minn.)+		1,500	10/20
Total for year	3,500		
Claiborne Pell (D R.I.)+		2,000	9/18
John Sparkman (D Ala.)+		1,000	11/1

House

Democratic Congressional Campaign Committee		1,000	10/11
Republican Congressional Campaign Committee		1,000	10/20
Glenn M. Anderson (D Calif.)+		1,000	10/11
Les Aspin (D Wis.)+		1,000	10/11
Bob Bergland (D Minn.)+		1,000	10/11
James H. Bilbray (D Nev.)		1,000	10/11
Total for year	2,000		
Ellis B. Bodron (D Miss.)		1,000	10/20
John C. Culver (D Iowa)+		1,000	10/20
John H. Dent (D Pa.)+		1,000	10/24
Total for year	2,000		

Daniel J. Flood (D Pa.)+		1,000	10/18
Werner H. Fornos (D Md.)		2,000	9/8
Donald M. Fraser (D Minn.)+		1,000	10/20
Ella T. Grasso (D Conn.)+		1,000	10/18
K. Gunn McKay (D Utah)+		1,000	10/11
John Melcher (D Mont.)+		1,000	10/11
Edward Mezvinsky (D Iowa)+		1,000	9/18
James G. O'Hara (D Mich.)+		1,000	10/11
David R. Obey (D Wis.)+		1,500	10/11
Arnold Olsen (D Mont.)		1,000	9/12
Wayne Owens (D Utah)+		1,000	10/11
Total for year	2,000		
Ogden R. Reid (D N.Y.)+		1,000	10/11
Fernand J. St Germain (D R.I.)+		1,000	10/18
Morris K. Udall (D Ariz.)+		1,000	9/20
Elmer Violette (D Maine)		1,000	9/20

Other upper level contributions reported before Sept. 6, 1972:

Senate

Ed Edmondson (D Okla.)	3,500

Wayne Morse (D Ore.)	3,000
David Pryor (D Ark.)	5,000
Jennings Randolph (D W.Va.)+	1,000
Ted Stevens (R Alaska)+	1,000
Ralph W. Yarborough (D Texas)	5,000

House

Nick Begich (D Alaska)+	1,000
Roger Boas (D Calif.)	1,000
George E. Brown Jr. (D Calif.)+	2,000
Phillip Burton (D Calif.)+	1,000
John Conyers Jr. (D Mich.)+	1,000
Dominick V. Daniels (D N.J.)+	2,000
John H. Dent (D Pa.)+	1,000
John J. Desmond (D Mass.)	1,000
Cornelius E. Gallagher (D N.J.)	1,000
Michael J. Harrington (D Mass.)+	1,000
Wayne L. Hays (D Ohio)+	1,500
John Hempelmann (D Wash.)	1,000
Ray J. Madden (D Ind.)+	5,000
John J. McFall (D Calif.)+	1,000
Robert H. Mollohan (D W.Va.)+	2,000
Wayne Owens (R Utah)+	1,000
Claude Pepper (D Fla.)+	1,000
Peter W. Rodino Jr. (D N.Y.)+	1,000
William R. Roy (D Kan.)+	1,000
John S. Stevens (D Kan.)	1,500
W. S. (Bill) Stuckey (D Ga.)+	1,000

Frank Thompson Jr. (D N.J.)+	2,000	
Ed V. Williams (D Idaho)	1,000	
Andrew Young (D Ga.)+	1,500	

Transportation. The Transportation Political Education League of the 262,600-member **United Transportation Union, AFL-CIO**, reported total receipts of $164,673.04, expenditures of $262,464—including $262,195 in candidate contributions—and cash on hand of $168,320.01 as of Dec. 31, 1972. Major contributions reported after Sept. 1, 1972:

President

Vance Hartke (D)		$ 3,000	12/5
Total for year [9]	7,800		

Senate

Terry M. Carpenter (D Neb.)		1,000	9/21
Total for year	2,000		
Jack Daniels (D N.M.)		1,000	9/21
Frank J. Kelley (D Mich.)		1,000	10/2
James B. Pearson (R Kan.)+		1,000	9/21
Barefoot Sanders (D Texas)		1,000	10/9

House

M. Robert Carr (D Mich.)		1,000	10/13
Jerome T. Hart (D Mich.)		1,000	10/13
Thomas E. Morgan (D Pa.)+		1,000	9/29

Miscellaneous

Democratic National Committee		4,000	10/20

Other upper level contributions reported before September 1972:

President

Hubert H. Humphrey (D)		5,300

Senate

Ray Blanton (D Tenn.)		1,000
Dick Clark (D Iowa)+		1,000
Ed Edmondson (D Okla.)		1,000
Nick Galifianakis (D N.C.)		1,000
Lee Metcalf (D Mont.)+		1,000
Walter F. Mondale (D Minn.)+		1,000
David Pryor (D Ark.)		2,000
Ralph W. Yarborough (D Texas)		2,000

House

Carl Albert (D Okla.)+		1,000

Ellis B. Bodron (D Miss.)		1,000
Frank Horton (R N.Y.)+		1,000
John M. Murphy (D N.Y.)+		1,000
Fred B. Rooney (D Pa.)+		1,000

9 Hartke figure listed under Senate earlier.

Miscellaneous Committees

CLW. The **Council for a Livable World,** dedicated to disarmament programs, reported total receipts of $199,937.13, expenditures of $191,743.85—including candidate contributions of $29,500—and cash on hand of $22,374.09 as of Dec. 31, 1972. Upper level contributions reported, all in Senate races and after Sept. 1, 1972:

Senate

Joseph R. Biden Jr. (D Del.)+		$ 1,000	9/6
		2,000	9/6
		5,000	9/8
		5,000	10/24
Total for year		13,000	
Dick Clark (D Iowa)+		1,000	10/24
William E. (Bud) Davis (D Idaho)		3,000	10/15
		2,000	10/24
Total for year		5,000	
Floyd K. Haskell (D Colo.)+		1,000	10/24
William D. Hathaway (D Maine)+		1,000	10/24

NCEC. The **National Committee for an Effective Congress** (NCEC), a founder of the Democratic Study Group in the House, reported total receipts of $700,058.90, expenditures of $669,926.28—including candidate contributions of $402,450—and cash on hand of $30,132.62 as of Dec. 31, 1972. Contributions after Sept. 1, 1972:

Senate

James Abourezk (D S.D.)+		$ 5,000	10/9
		5,000	10/26
		2,000	11/1
Subtotal		12,000	
Total for year	35,000		
Joseph R. Biden Jr. (D Del.)+		10,000	10/9
		10,000	10/26
		2,000	11/1
Total for year		22,000	
Dick Clark (D Iowa)+		5,000	10/9
		5,000	10/26
		1,000	11/1
Subtotal		11,000	
Total for year	19,000		

William E. (Bud) Davis (D Idaho)		10,000	10/9
		10,000	10/26
		1,000	11/1
Subtotal		21,000	
Total for year	29,000		

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Floyd K. Haskell (D Colo.)+		5,000	10/26
		1,000	11/1
Subtotal		6,000	
Total for year	16,000		
William D. Hathaway (D Maine)+		5,000	10/9
Total for year	31,000		
Walter (Dee) Huddleston (D Ky.)+		1,000	11/1
Total for year	11,000		
Frank J. Kelley (D Mich.)		5,000	10/9
Total for year	13,000		
Lee Metcalf (D Mont.)+		5,000	10/9
Total for year	20,200		
Claiborne Pell (D R.I.)+		3,000	9/21
		500	9/21
		7,000	10/6
Subtotal		10,500	
Total for year	42,000		
Barefoot Sanders (D Texas)		20,000	10/26
		2,000	11/1
Total for year		22,000	
William B. Spong Jr. (D Va.)		5,000	10/26

House

William R. Anderson (D Tenn.)		1,000	10/9
		1,000	10/26
Subtotal		2,000	
Total for year	4,200		
Carter F. Bales (D N.Y.)		1,000	10/26
Bob Bergland (D Minn.)+		1,000	10/9
		1,000	10/26
Subtotal		2,000	
Total for year	4,200		
George E. Brown Jr. (D Calif.)+		1,000	10/26
Total for year	5,200		
Daniel S. Cooper (D Mich.)		1,000	10/26
Robert F. Drinan (D Mass.)+		1,000	10/11
Jerry Fitzgerald English (D N.J.)		1,000	9/15
		200	9/27
Total for year		1,200	
Floyd J. Fithian (D Ind.)		1,000	10/26
Total for year	2,200		
Werner H. Fornos (D Md.)		1,000	10/9
		1,000	10/26
Subtotal		2,000	
Total for year	6,200		
Eugene Gallegos (D N.M.)		1,000	10/11
Total for year	4,000		

James W. Goodrich (D Ohio)		1,000	10/9
		2,500	10/18
		1,000	10/26
		1,000	11/1
Subtotal		5,500	
Total for year	6,700		
Ella T. Grasso (D Conn.)+		1,000	10/9
		1,000	10/26
Subtotal		2,000	
Total for year	5,000		
James J. Howard (D N.J.)+		1,000	10/9
Total for year	2,200		
Andrew Jacobs Jr. (D Ind.)		1,000	10/9
		1,000	10/26
Subtotal		2,000	
Total for year	5,200		
John W. Jenrette Jr. (D S.C.)		1,000	9/11
		1,000	10/19
		1,000	10/26
Total for year		3,000	
Timothy Lemucchi (D Calif.)		1,000	10/26
Total for year	2,000		
Allard K. Lowenstein (L N.Y.)		1,000	9/15
Total for year	5,000		
Richard D. McCarthy (D-L N.Y.)		1,000	10/26
Total for year	2,200		
Alan Merson (D Colo.)		1,000	10/26
		1,000	11/1
Subtotal		2,000	
Total for year	3,200		
Edward Mezvinsky (D Iowa)+		1,000	10/9
Abner J. Mikva (D Ill.)		1,000	10/9
		1,000	10/6
		1,000	11/1
Subtotal		3,000	
Total for year	8,000		
Harold O. Miller (D Va.)		1,000	10/9
		1,000	10/26
Subtotal		2,000	
Total for year	3,700		
John Joseph Moakley (D Mass.)+		1,000	10/26
Richard M. Nolan (D Minn.)		1,000	11/1
Total for year	2,000		
Richard L. Ottinger (D-L N.Y.)		1,000	9/15
		500	9/27
		1,000	10/9
		1,000	10/26
Total for year		3,500	
J. O. Patterson Jr. (D Tenn.)		1,000	10/26
Ogden R. Reid (D N.Y.)+		1,000	10/26
Total for year	4,500		
Teno Roncalio (D Wyo.)+		1,000	10/9
		1,000	10/26
Subtotal		2,000	
Total for year	4,200		

J. Edward Roush (D Ind.)+		1,000	10/9
		1,000	10/26
Subtotal		2,000	
Total for year	5,200		
Patricia Schroeder (D Colo.)+		2,000	10/26
		1,000	11/1
Total for year		3,000	
Philip R. Sharp (D Ind.)		1,000	10/26
Total for year	3,200		
Gerry E. Studds (D Mass.)+		1,000	10/9
		1,000	10/26
Subtotal		2,000	
Total for year	12,200		
Walter Thoresen (D Wis.)		1,000	10/26
		1,000	11/1
Total for year		2,000	
Andrew Young (D Ga.)+		1,000	10/9
Total for year	4,200		

Other upper level contributions reported before September 1, 1972:

Senate

Edward W. Brooke (R Mass.)+	5,200
Clifford P. Case (R N.J.)+	5,000
Walter F. Mondale (D Minn.)+	10,200
James B. Pearson (R Kan.)+	10,000
David Pryor (D Ark.)	27,500

House

Democratic Study Group	15,000
John G. Dow (D N.Y.)	5,500
John F. Kerry (D Mass.)	7,200
Howard Lee (D N.C.)	2,000
Thomas Manton (D N.Y.)	5,000
Paul N. McCloskey Jr. (R Calif.)+	2,000
David R. Obey (D Wis.)+	2,000
Wayne Owens (D Utah)+	6,200
Paul S. Sarbanes (D Md.)+	5,000

104. To the extent that campaign contributions over a certain limit are made illegally, candidates will lessen their reliance on them. Thus, reliance on large contributions may be replaced by extensive activities such as those listed in finding of fact no. 5, *supra.*

105. Under the campaign laws in effect prior to the 1974 FECA Amendments, some part of the money raised from the business community for political purposes was given in fear of what would happen if it were not given.

106. A significant percentage of the revenues used to finance political conventions is paid in the form of advertising revenue derived from a small percentage of the population.

107. All varieties of political activity in America, such as those listed in finding of fact no. 5, *supra,* is carried on by a small percentage of the population. Only about four or five percent of the population is active in a party, a campaign, or attend political meetings. About 10 percent make monetary contributions, about 13 percent contact public officials, and about 15 percent display a button or a sticker. Ownership of newspapers, magazines,

and radio stations is also concentrated in a "small" percentage of the population. The Harris Poll indicates that 33 percent of the individuals surveyed had "contributed financially to a political campaign". 14 percent had "campaigned or worked actively for a candidate for Congress" or "for a candidate for President." 11 percent had "picketed or took part in a street demonstration".

108. Certain individuals and organizations, by offering or making large campaign contributions, have sought to influence and have influenced the decisions of, and have sought and received governmental benefits or special consideration

from, candidates for federal elective office, federal office holders, and persons associated with them, in return for or as a result of such campaign contributions.

109. Corporations, other organizations and individuals have made illegal campaign contributions.

110. Corporations, other organizations and individuals have determined that it furthered their business and private interests to make legal and illegal campaign contributions.

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111. Corporations, other organizations and individuals have determined that it furthered their business and private interests to make legal and illegal campaign contributions to more than one candidate for the same federal elective office in the same election.

112. The following individual entered a plea of guilty to 18 U.S.C. Section 610, the federal statute prohibiting the receipt of corporate campaign contributions.

a. *Maurice H. Stans* – March 12, 1975
2 counts

113. The following individuals entered pleas of guilty to violations of 18 U.S.C. Section 610, the federal statute prohibiting the making of corporate campaign contributions:

a. *Raymond Abendroth* (Time Oil Corp.);
2 counts

b. *James Allen* (Northrop Corp.);
1 count

c. *Richard L. Allison* (Lehigh Valley Cooperative Farmers);
1 count

d. *Orin E. Atkins* (Ashland Petroleum Gabon);
1 count

e. *Russell DeYoung* (Goodyear Tire and Rubber Co.);
1 count

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f. *Ray Dubrowin* (Diamond International Corp.);
1 count

g. *Harry Heltzer* (Minnesota Mining and Manufacturing Co.);
1 count

h. *Charles N. Huseman* (HMS Electric Corp.);
1 count

i. *William W. Keeler* (Phillips Petroleum Co.);
1 count

j. *Harding L. Lawrence* (Braniff Airways);
1 count

k. *William Lyles Sr.* (LBC & Inc.);
2 counts

l. *H. Everett Olson* (Carnation Co.);
1 count

m. *Claude C. Wild, Jr.* (Gulf Oil Corp.);
1 count

n. *Harry Ratrie* (Ratrie, Robbins and Schweitzer, Inc.);
1 count

o. *Augustus Robbins III* (Ratrie, Robbins and Schweitzer, Inc.);
1 count

114. The following individuals entered pleas of guilty to violations of 18 U.S.C. Sections 2 and 610, aiding and

abetting an illegal corporate campaign contribution:

[101]

a. *Francis X. Carroll* (Lehigh Valley Cooperative Farmers);
1 count

b. *Norman Sherman* (AMPI);
1 count

c. *John Valentine* (AMPI);
1 count

115. The following corporations entered pleas of guilty to violations of 18 U.S.C. Section 610, illegal campaign contribution:

a. *American Airlines;*
1 count

b. *Ashland Oil Inc.;*
5 counts

c. *Ashland Petroleum Gabon Inc.;*
1 count

d. *Braniff Airways;*
1 count

e. *Carnation Company,*
1 count

f. *Diamond International Corp.;*
1 count

g. *Goodyear Tire and Rubber Company;*
1 count

h. *Greyhound Corp.*
1 count

i. *Gulf Oil Corp.;*
1 count

j. *Lehigh Valley Cooperative Farmers;*
1 count

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k. *Minnesota Mining and Manufacturing Co.;*
1 count

l. *National By-Products Inc.;*
1 count

m. *Phillips Petroleum Co.;*
1 count

n. *Time Oil Corp.;*
2 counts

o. *Ratrie, Robbins and Schweitzer, Inc.:*
1 count

116. The following corporations entered pleas of guilty to violations of 8 U.S.C. Section 611, illegal campaign contributions by a government contractor:

a. *LBC & W Inc.;*
1 count

b. *Northrop Corporation;* .
1 count

117. The following individuals, corporations and committees pleaded guilty to related campaign contribution offenses:

a. *American Shipbuilding Company;*
one count of violation of 18 U.S.C. Section 371, conspiracy and one count of violation of 18 U.S.C.

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Section 610, illegal campaign contribution.

b. *Associated Milk Producers*
one count of violation of 18 U.S.C. Section 371, conspiracy, and five counts of violation of 18 U.S.C. Section 610, illegal campaign contribution.

c. *Tim M. Babcock;*
one count of violation of 2 U.S.C. Section 440, making a contribution in the name of

another person.

d. *DKI for '74;*
one count of violation of 2 U.S.C. Sections 434[a] and [b], and 441, failure to report receipt of contributions and failure to report names, addresses, occupations and principal places of business of the persons making such contributions.

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e. *Jake Jacobsen;*
one count of violation of 2 U.S.C. Section 201(f), making an illegal payment to a public official.

f. *Thomas V. Jones;*
one count of violation of 18 U.S.C. Sections 2 and 611, willfully aiding and abetting a violation of statute prohibiting campaign contributions by government contractors.

g. *Herbert W. Kalmbach;*
one count of violation of the Federal Corrupt Practices Act, 2 U.S.C. Sections 242(a) and 252(b), and one count of violation of 18 U.S.C. Section 600, promising federal employment as a reward for political activity and support of a candidate.

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h. *John H. Melcher, Jr.;*
one count of violation of 18 U.S.C. Sections 3 and 610, being an accessory after the fact to an illegal corporate campaign contribution.

i. *Harold S. Nelson*
(former general manager, Associate Milk Producers, Inc. (AMPI)); one count of

violation of 18 U.S.C. Section 371, conspiracy to violate 18 U.S.C. Section 201(f), making illegal payment to government official, and 18 U.S.C. Section 610, illegal campaign contribution.

j. *David L. Parr*
one count of conspiracy to violate 18 U.S.C. Section 610, illegal campaign contribution.

k. *George M. Steinbrenner, III,*
(Chairman of the Board, American Shipbuilding Co.); one count of

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violation of 18 U.S.C. Section 371, conspiracy to violate 18 U.S.C. Section 610, illegal campaign contribution and one count of violation of 18 U.S.C. Section 3, accessory after the fact to an illegal campaign contribution.

118. Some business executives made illegal corporate camapign contributions in an attempt to assure access to government officials merely to advance their points of view.

119. The Goodyear Tire and Rubber Company maintained funds in a foreign bank account from which contributions were made from time to time for political purposes in the United States. The account was initiated in 1964 and terminated in 1970. Over the six years of its existence, approximately $522,000 was entered in the account. Slightly more than half of this amount was ultimately entered as income in the books of foreign subsidiaries of the company and used by those foreign subsidiaries in the ordinary course of their business. The remainder, $260,000, was transferred to the United States at various times between 1964 and 1970, and was

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used for political contributions. There is no evidence that any

of the funds were ever used for any other purpose than political contributions.

120. Gulf Oil Corporation has admitted using $5.4 million for political campaign contributions in the United States. The Securities and Exchange Commission has charged that a substantial portion of this sum was unlawful. Gulf has entered into a consent decree under which it agreed not to use corporate funds for illegal corporate contributions in the future.

121. Herbert W. Kalmbach, formerly Vice Chairman of the Finance Committee to Re-Elect the President and personal counsel to former President Nixon, pleaded guilty to a violation of 18 U.S.C. Section 600, for promising an ambassadorship to J. Fife Symington, Jr. in return for a $100,000 campaign contribution.

122. Kalmbach testified that he reached an agreement with Vincent deRoulet, then Ambassador to Jamaica, that deRoulet would receive a European ambassadorship in return for a $100,000 contribution.

123. Robert Gray, of the public relations firm of Hill & Knowlton, testified concerning the interest in

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an ambassadorship of Roy Carver, who contributed $257,000 to the Finance Committee to Re-Elect the President, as follows:

> "Mr. Dorsen. Did his [Carver's] desire to give the largest contribution in the campaign have anything to do with his desire to become an ambassador?
>
> "Mr. Gray. With his desire to be considered as an ambassador? Yes, I am sure that it did. I can not imagine that he would have given those

kinds of monies without that belief."

124. Over $1.7 million in Presidential campaign contributions can be attributed in whole, or in part, to persons who held or are holding ambassadorial appointments from former President Nixon, as shown in the following table.

[109]

CONTRIBUTIONS OF AMBASSADORS APPOINTED BY PRESIDENT NIXON

Name	Post	Date confirmed by Senate	Pre-Apr. 7, 1972	Post-Apr. 7, 1972	Total
Adair, E. Ross	Ethiopia [1]	May 11, 1971			
Annenberg, Walter H	Great Britain	Mar. 13, 1969	$250,000	$4,000	$254,000
Campbell, James F	El Salvador	Feb. 8, 1974			
Catto, Henry E	do [1]	Sept. 29, 1971	25,000		25,000
Crowe, Philip K	Norway [1]	May 1, 1969		500	500
Davis, Shelby	Switzerland	May 12, 1969	100,000		100,000
De Roulet, Vincent	Jamaica [1]	Sept. 17, 1969	100,000	3,500	103,500
Dudley, Guilford	Denmark	May 12, 1969		2,500	2,500
Eisenhower, John	Belgium [1]	Mar. 13, 1969			
Farkas, Ruth L	Luxembourg	Mar. 26, 1973		300,000	300,000
Farland, Joseph S	Iran [1]	Mar. 27, 1972	10,000	12,300	22,300
Ferguson, Clarence C	Uganda [1]	Mar. 16, 1970			
Firestone, Leonard K	Belgium	Apr. 10, 1974	100,000	15,100	115,100
Franzheim, Kenneth	New Zealand	July 30, 1969			
Gerrard, Sumner	Jamaica	Mar. 20, 1974	38,867		38,867
Gould, Kingdon	Netherlands	Sept. 26, 1973	100,000	900	100,900
Helms, Richard	Iran	Feb. 8, 1973			
Hill, Robert C	Argentina	Dec. 19, 1973		750	750
Holland, Jerome H	Sweden [1]	Feb. 16, 1970			
Humes, John F	Austria	Sept. 24, 1969	100,000	500	100,500
Hurd, John G	South Africa	July 23, 1970			
Ingersoll, Robert S	Japan [1]	Feb. 25, 1972	3,000		3,000
Irwin, John N	France	Feb. 1, 1973	50,000	500	50,500
Keating, Kenneth	Israel	June 15, 1973		3,000	3,000
Kintner, William R	Thailand	Sept. 26, 1973			
Krehbiel, V. John	Finland	Mar. 26, 1973		29,500	29,500
Lodge, John D	Argentina [1]	May 23, 1969		200	200
Macomber, William B	Turkey	Mar. 26, 1973		500	500
Marshall, Anthony D	Kenya	Dec. 18, 1973	48,505		48,505
Meeker, Leonard	Romania [1]	July 22, 1969			
Melady, Thomas P	Uganda [1]	June 12, 1972			
Middendorf, J. Wm	Netherlands [1]	June 12, 1969		2,000	2,000
Miller, Lloyd I	Trinidad and Tobago [1]	Dec. 19, 1973		25,000	25,000
Moore, John D. J	Ireland	Apr. 18, 1969		10,442	10,442
Moynihan, Daniel P	India [1]	Feb. 8, 1973			
Neumann, Robert G	Morocco	Sept. 19, 1973			
Peterson, Val	Finland [1]	May 1, 1969			
Ploeser, Walter C	Costa Rica [1]	Apr. 6, 1970			
Pritzlaff, John C	Malta [1]	July 8, 1969		1,000	1,000
Replogle, Luther I	Iceland [1]	do			
Rice, Walter L	Australia [1]	Aug. 13, 1969		1,000	1,000
Rivero, Adm. Horacio	Spain	Sept. 8, 1972			
Rush, Kenneth	Germany [1]	July 8, 1969		2,000	2,000
Russell, Fred J	Denmark [1]	Jan. 3, 1971			
Sanchez, Phillip V	Honduras	May 17, 1973			
Schmidt, Adolph	Canada	July 8, 1969		1,000	1,000
Scott, Stuart Nash	Portugal	Dec. 18, 1973			
Selden, Armistead	New Zealand, Fiji and Tonga, and Western Samoa.	Feb. 27, 1974			
Smith, Robert S	Ivory Coast	Feb. 8, 1974			
Strausz-Hupe, Robert	Sweden	Apr. 25, 1974		1,000	1,000
Symington, J. Fife	Trinidad and Tobago	July 8, 1969	100,000	500	100,500
Vaughn, Jack Hood	Colombia [1]	May 23, 1969			
Volpe, John A	Italy	Feb. 1, 1973		2,000	2,000
Watson, Arthur K	France [1]	Apr. 6, 1970	300,000	3,000	303,000
Total			1,325,372	422,692	1,748,064

[1] No longer serving in post.

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125. Disclosure of the sources and amounts of campaign contributions will deter, among others, contributions considered corrupt by the community.

126. A substantial percentage of the illegal corporate campaign contributions discovered in the 1972 election was made prior to the effective date of the disclosue provisions of the 1971 FECA.

127. A substantial number of the largest contributions from individuals and organizations were contributed prior to the effective date of the disclosure provisions of the 1971 FECA.

128. The "Watergate break-in," and campaign "dirty tricks" undertaken by Donald Segretti, Anthony Ulasewicz and other individuals employed by the Committee to Re-Elect the President in 1971 and 1972 were funded entirely by campaign contributions made to the Finance Committee to Re-Elect the President and excluded from the ledgers of receipts and expenditures maintained by the Finance Committee to Re-Elect the President prior to the effective date of the disclosure provisions of the 1971 FECA. Discovery of the persons responsible for the Watergate break-in was facilitated by tracing the campaign contributions used for these purposes.

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129. Illegal practices in connection with federal elections' campaign financing practices, and governmental processes are more likely to occur and will occur if the legal restrictions and requirements applicable to campaign practices are not fairly, vigorously and effectively enforced.

130. Assistant Attorney General Will W. Wilson wrote to Senator George Murphy on May 22, 1970 the following:

"The Federal Corrupt Practices Act was passed in

1925. In each election since that time there have been allegations that various candidates for Congress and various political committees failed to file reports of campaign contributions and expenditures or failed to file them on time. In only one instance was a prosecution undertaken by the Department of Justice. That prosecution occurred in the early 1930's and involved a committee report in which campaign contributions which had been made were omitted from the report which had been filed. Thus, no case has ever been brought charging absolute failure to file on time. In view of this record, fair play demands that before prosecutions are undertaken for alleged violations of the filing provisions of the Federal Corrupt Practices Act, the Department of Justice has an obligation to notify all candidates and all committees that henceforth violators will be proceeded against. It has been concluded, therefore, to take no further action with respect to the committees and the individual congressional candidates, who,

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in connection with the 1968 election, did not file their reports on time."

131. Richard G. Kleindienst, former Attorney General of the United States, has testified:

"Mr. Devine. . . . During the 2½ years you have served as Deputy Attorney General, has the Justice Department or anyone under your supervision instituted any prosecutions for violation of the Corrupt Practices Act?

"Mr. Kleindienst. We have in one limited area, under the banking laws, where there has been a technical violation for a bank to have loaned a

candidate for Federal office money, and in those cases we have only proceeded against the bank and not the individuals.

* * *

"The reasons why we haven't initiated prosecution, Mr. Devine, is for the reason that these laws, as they exist and as they have been applied and as they have been enforced in the past, have been inadequately enforced. They are so full of the loopholes that Congressman Dent referred to, that traditionally Democrats and Republicans, either administration, just have not done it."

132. Elliot Richardson has stated in an affidavit dated June 17, 1974:

"On July 3, 1973 General Haig, the President's Chief of Staff, called me about a *Los Angeles Times* story that Mr. Cox was investigating ex-

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penditures related to the 'Western White House' at San Clemente. I called Mr. Cox, who said that he was not investigating San Clemente. Mr. Cox explained that he had asked his press officer to assemble press clippings on San Clemente after Mr. Cox was questioned about San Clemente at a press conference. The press officer requested clippings from the *Los Angeles Times*, which had carried most of the articles. I called General Haig back and told him this. He said that I ought to get a statement from Mr. Cox saying that Mr. Cox was not investigating the matter. General Haig said that he was not sure the President was not going to move on this to discharge Mr. Cox, and that it could not be a

matter of Cox's charter to investigate the President of the United States. I called Mr. Cox, who agreed to make a statement. Some time after 1:00 p.m. I called back General Haig, who said the statement was inadequate. At this point the President broke in on the conversation. The President said that he wanted a statement by Mr. Cox making it clear that Mr. Cox was not investigating San Clemente, and he wanted it by two o'clock.

"On July 23, 1973 General Haig called and told me that the 'boss' was very 'uptight' about Cox and complained about various of his activities, including letters to the IRS and the Secret Service from the Special Prosecutor's office seeking information on guidelines for electronic surveillance. General Haig told me that 'if we have to have a confrontation we will have it.' General Haig said that the President wanted 'a tight line drawn with no further mistakes,' and that 'if Cox does not agree, we will get rid of Cox.' In this instance Mr. Cox agreed that the requests for information contained in the letters sent by his office to Treasury Department agencies had been over-broadly stated."

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133. Below are selections from The Gallup Poll: Public Opinion 1935 - 1971.

Excerpts from The Gallup Poll: Public Opinion 1935 - 1971

By Region

	Projected Figures of Those Planning To Attend
New England	3,400,000
Middle Atlantic	14,600,000
East Central	5,700,000
West Central	2,600,000
South	5,600,000
West	1,100,000
Total	33,000,000

JANUARY 18
UNEMPLOYMENT RELIEF

Interviewing Date 12/25–30/38
Survey #142 — Question #7a

Would you favor having a national committee made up of members of both major political parties to handle unemployment relief?

Yes	73%
No	27

By Political Affiliation

	Yes	*No*
Democrats	72%	28%
Republicans	74	26

JANUARY 20
DEFENSE PROGRAMS

Interviewing Date 1/9–14/39
Survey #143–A — Question #1a

As part of the national defense program the Government is planning to train young men in schools and colleges to fly airplanes. Do you favor this plan?

Yes	87%
No	13

By Age

	Yes	*No*
Under 30 Years	91%	9%
Over 30 Years	85	15

Interviewing Date 1/9–14/39
Survey #143–A — Question #1b

Asked of those between the ages of 19 and 30: Would you like to receive such training?

Yes	74%
No	26

JANUARY 23
RELIEF AND POLITICS

Interviewing Date 1/9–14/39
Survey #143–A — Question #8a

Would you favor a law prohibiting any person on relief from contributing money to a political campaign?

Yes	78%
No	22

Interviewing Date 1/9–14/39
Survey #143–A — Question #8b

Would you favor a law prohibiting any relief official from contributing money to a political campaign?

Yes	70%
No	30

Interviewing Date 1/9–14/39
Survey #143–A — Question #9

Should employees of the Federal Government be prohibited from contributing money to political campaigns?

Yes	62%
No	38

Interviewing Date 12/25–30/38
Survey #142 — Question #8

*Do you **think** officials in charge of relief should be under civil service?*

Yes	75%
No	25

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Dewey on the Republican ticket, which one would you prefer?

Roosevelt	52%
Dewey	48

Eight per cent expressed no opinion.

By Income

	Roosevelt	*Dewey*
Upper	31%	69%
Middle	48	52
Lower (including reliefers)	66	34
Reliefers	74	26

Roosevelt Voters in 1936

Roosevelt	79%
Dewey	21

Landon Voters in 1936

Roosevelt	5%
Dewey	95

By Income

	Hull	*Dewey*
Upper	40%	60%
Middle	49	51
Lower (including reliefers)	59	41
Reliefers	65	35

Roosevelt Voters in 1936

Hull	75%
Dewey	25

Landon Voters in 1936

Hull	12%
Dewey	88

By Region

	Hull	*Dewey*
New England	43%	57%
Middle Atlantic	49	51
East Central	46	54
West Central	49	51
South	75	25
West	50	50

By Region

	Roosevelt	*Dewey*
New England	46%	54%
Middle Atlantic	53	47
East Central	46	54
West Central	48	52
South	71	29
West	55	45

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Interviewing Date 5/5–10/40
Survey #193–K Question #4c

If Cordell Hull runs for President on the Democratic ticket against Thomas Dewey on the Republican ticket, which one would you prefer?

Hull	51%
Dewey	49

Fifteen per cent expressed no opinion.

MAY 13
POLITICAL CONTRIBUTIONS

Interviewing Date 4/25–30/40
Survey #192–K Question #5

Do you think it is all right to ask state and other local government employees for money for state political campaigns or do you think this should be prevented by law?

Practice all right	21%
Should be prevented	79

Fifteen per cent expressed no opinion.

By Political Affiliation

	All Right	*Should Be Prevented*
Democrats	25%	75%
Republicans	17	83

Choice of Ohio Democrats

Roosevelt	91%
Farley	3
Byrnes	3
Wallace	2
Douglas	1
Winant	*
McNutt	*

*Less than 1%.

Choice of California Democrats

Roosevelt	86%
Wallace	6
Farley	4
McNutt	1
Douglas	1
Byrnes	1
Winant	1

AUGUST 18
DRAFTING OF WOMEN

Interviewing Date 7/30–8/4/43
Survey #299–K
Question #2

Do you favor drafting single women between the ages of 21 and 35 to serve in the WACS, WAVES, or other similar branches of the armed service?

Yes	45%
No	48
Undecided	7

By Sex

Men

Yes	39%
No	54
Undecided	7

Women

Yes	51%
No	42
Undecided	7

Women 21–35 Years

Yes	58%
No	36
Undecided	6

By Region

East

Yes	45%
No	49
Undecided	6

Midwest

Yes	44%
No	48
Undecided	8

South

Yes	44%
No	46
Undecided	10

West

Yes	47%
No	46
Undecided	7

AUGUST 20
POLITICAL CONTRIBUTIONS

Interviewing Date 7/31–8/4/43
Survey #299–K
Question #3a

Do you think labor unions should or should not be allowed to give money to campaign funds of political parties?

Should	17%
Should not	65
Undecided	18

By Political Affiliation

Republicans

Should	14%
Should not	70
Undecided	16

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Interviewing Date 8/8–13/47
Survey #402–K
Question #2b

What is the smallest amount of money a family of four (husband, wife, and two children) needs each week to get along on in this community?

By Region
(Median Average)

New England and Middle Atlantic	$45 wk.
East and West Central	38 wk.
South	33 wk.
Mountain and Pacific	42 wk.

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SEPTEMBER 7
WAGE OUTLOOK

Interviewing Date 8/8–13/47
Survey #402–K
Question #3

Do you think wage rates, in general will be higher, lower, or about the same a year from now?

Higher	18%
Lower	27
About the same	44
No opinion	11

Interviewing Date 8/8–13/47
Survey #402–T
Question #3

Do you think wage rates for the business you (your husband) are in will be higher, lower, or about the same a year from now?

Higher	15%
Lower	15
About the same	60
No opinion	10

Union Members Only

Higher	19%
Lower	10
About the same	65
No opinion	6

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SEPTEMBER 10
PRESIDENTIAL TRIAL HEAT

Interviewing Date 8/29–9/3/47
Survey #403–K–1
Question #14

Asked of union members: What man would you like to see elected President of the United States in 1948?

Harry Truman	28%
Thomas Dewey	14
Henry Wallace	7
Harold Stassen	6
General Dwight Eisenhower	4
General Douglas MacArthur	2
Arthur Vandenberg	2
Earl Warren	2
Robert Taft	1
Others	8
No choice	26

SEPTEMBER 12
LABOR UNION AND CORPORATION FUNDS

Interviewing Date 8/8–13/47
Survey #402–K
Question #13a

Do you think labor unions should be permitted to spend labor funds to help elect or defeat candidates for political offices?

Yes	17%
No	71
No opinion	12

Union Members Only

Yes	26%
No	64
No opinion	10

Interviewing Date 8/8–13/47
Survey #402–K
Question #13b

Do you think business corporations should be permitted to spend corporation funds to help elect or defeat candidates for political offices?

Yes	16%
No	72
No opinion	12

Union Members Only

Yes	21%
No	68
No opinion	11

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SEPTEMBER 13
LOYALTY PURGES

Interviewing Date 8/8-13/47
Survey #402-K — Question #8

If questions of national security are involved, should our Government have the right to fire any employee at any time if his dependability or his loyalty to the United States is questioned — or should every United States Government employee have the right to present his side of the case?

Should have right to fire	24%
Should have right to present case	68
No opinion	8

By Age

21-29 Years

Should have right to fire	19%
Should have right to present case	75
No opinion	6

30-49 Years

Should have right to fire	23%
Should have right to present case	69
No opinion	8

50 Years and Over

Should have right to fire	29%
Should have right to present case	62
No opinion	9

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SEPTEMBER 14
UNITED NATIONS

Interviewing Date 8/8-13/47
Survey #402-K — Question #6a

Are you in favor of the United Nations organization?

Yes	85%
No	6
No opinion	9

Are you satisfied or dissatisfied with the progress made to date by the United Nations organization?

Satisfied	33%
Dissatisfied	51
No opinion	16

Do you think there are any weak points in the United Nations organization?

Yes	56%
No	12
No opinion	32

Asked of those who replied in the affirmative: What are the weak points?

The following are listed in order of frequency of mention:

Veto power
Lack of cooperation and unity
Lack of power to carry out decisions
Difficulty with Russia

What do you think has been the main value of the United Nations up to now?

The following are listed in order of frequency of mention:

Effort to get together and talk things over
Efforts to maintain peace
Laying groundwork for future
Stopping the Dutch-Indonesian war

Heart disease	47%
Cancer	38
Tuberculosis	8
Infantile paralysis	1
Miscellaneous	3
Don't know	3

JUNE 27

POLITICAL CONTRIBUTIONS

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Interviewing Date 12/12–17/47
Survey #409–K — Question #10

If you were asked, would you contribute five dollars to the campaign fund of the political party you prefer?

Yes	27%
No	73

More evangelism, drive for members	6
Make churches less secular, more democratic	4
Less hypocrisy	3
Miscellaneous	5
Nothing needed	4
Don't know	32
	101%

(Note: table adds to more than 100% as some persons gave more than one reason.)

JULY 5

RUSSIA

Interviewing Date 5/28–6/2/48
Survey #419–K — Question #3

Do you think the United States is too soft or too tough (firm) in its policy toward Russia?

Too soft	69%
Too tough	6
About right	14
No opinion	11

By Occupation

Business and Professional

Too soft	67%
Too tough	9
About right	16
No opinion	8

White Collar

Too soft	67%
Too tough	6
About right	16
No opinion	11

Farmers

Too soft	71%
Too tough	5
About right	12
No opinion	12

JULY 3

RELIGION

171

Interviewing Date 5/28–6/2/48
Survey #419–K — Question #8a

Asked of Protestant churchgoers: Do you think it would or would not be a good thing for all Protestant churches in the United States to combine into one church?

Favor idea	42%
Do not favor	47
No opinion	11

Interviewing Date 5/28–6/2/48
Survey #419–K — Question #8b

What do you, yourself, think churches could do to increase their attendance?

Make services better	17%
More programs to arouse interest of youth	9
More social functions	8
Better leaders, men of higher caliber	7
Make religion more practical, more down to earth	6

JULY 28
CIVIC PARTICIPATION

Interviewing Date 5/30–6/4/52
Survey #493–K — Question #5

If you were asked, would you contribute $5 to the campaign fund of the political party you prefer?

Yes	34%
No	54
No opinion	12

By Political Affiliation

Republicans

Yes	44%
No	43
No opinion	13

Democrats

Yes	28%
No	61
No opinion	11

By Political Affiliation

Republicans

Favors law	54%
Opposes law	13
No opinion	10
Not familiar with law	23

Democrats

Favors law	18%
Opposes law	40
No opinion	13
Not familiar with law	29

Independents

Favors law	39%
Opposes law	24
No opinion	15
Not familiar with law	22

Labor Union Members

Favors law	23%
Opposes law	46
No opinion	12
Not familiar with law	19

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JULY 30
TAFT-HARTLEY LAW

Interviewing Date 7/13–18/52
Survey #495–K — Question #11a

Have you heard or read anything about the Taft-Hartley Law which deals with labor unions?

Yes	74%
No	26

Those who replied in the affirmative were asked: All other things being equal, would you vote for a candidate who is in favor of the Taft-Hartley Law — or would you vote for a candidate who is against the Taft-Hartley Law?

Favors law	36%
Opposes law	26
No opinion	12
	74%

AUGUST 1
PARTY AFFILIATION

Interviewing Date 7/25–30/52
Survey #496–K — Question #23a

In politics, as of today, do you consider yourself a Republican, Democrat or Independent?

Democrat	41%
Republican	34
Independent	25

Taking an arbitrary estimate of 55 million as the likely turnout of voters in November, here is the party lineup when the latest survey percentages are applied:

Democrats	22½ million
Republicans	18½ million
Independents	14 million

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Grade School

Yes	27%
No	49
Don't know	24

By Political Affiliation

Republicans

Yes	45%
No	39
Don't know	16

Democrats

Yes	30%
No	53
Don't know	17

Independents

Yes	38%
No	45
Don't know	17

Interviewing Date 8/4–9/55
Survey #551-K

Question #4b

Yes	18%
No	65
Don't know	17

By Political Affiliation

Republicans

Yes	17%
No	69
Don't know	14

Democrats

Yes	18%
No	62
Don't know	20

Independents

Yes	18%
No	67
Don't know	15

More manual workers (21%) would favor changing the present laws than would the business and professional group, of which 16% would favor the change. The major occupation group least in favor is the nation's farmers, of whom only 10% would go along with changing the laws. It is interesting also to note that, in terms of geographical regions of the country, least approval of the proposal is found in the South, where about one voter in 10, or 11%, thinks the laws should be changed. The South has long fought unionization of its industries.

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Do you think the Russians will agree to go along with President Eisenhower's proposal — that is, will they give us all of the information about their bases, or not?

Yes, will	6%
No, will not	78
Don't know	16

AUGUST 31
POLITICAL CONTRIBUTIONS

Interviewing Date 8/4–9/55
Survey #551-K

Question #9

Present laws forbid corporations or unions to make contributions to election campaigns for federal offices. Do you think these laws should be changed to permit corporations and unions to make contributions to campaigns?

SEPTEMBER 2
SURPLUS WHEAT AND BUTTER

Interviewing Date 8/4–9/55
Survey #551-K

Question #14a

The Government now has millions of bushels of wheat and millions of pounds of butter that have been stored away for years and may have to be dumped or destroyed. What do you think the Government should do with all this surplus food?

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Asked of Republican and Democratic county chairmen: If Estes Kefauver and Richard Nixon were opposing candidates for President, who do you think would win?

Views of Republican County Chairmen

Kefauver	229
Nixon	1232
Undecided	224

Views of Democratic County Chairmen

Kefauver	1154
Nixon	187
Undecided	276

Asked of Republican and Democratic county chairmen: If Averell Harriman and Richard Nixon were opposing candidates for President, who do you think would win?

Views of Republican County Chairmen

Harriman	310
Nixon	1189
Undecided	186

Asked of Republican and Democratic county chairmen: If Adlai Stevenson and Earl Warren were opposing candidates for President, who do you think would win?

Views of Republican County Chairmen

Stevenson	255
Warren	1266
Undecided	164

Views of Democratic County Chairmen

Stevenson	1229
Warren	198
Undecided	190

JANUARY 11
POLITICAL CONTRIBUTIONS

Interviewing Date 11/17-22/55
Survey #556-K — Question #7

If you were asked, would you contribute $5 to the campaign fund of the political party you prefer?

Yes	31%
No	56
Don't know	13

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Asked of Republican and Democratic county chairmen: If Estes Kefauver and Earl Warren were opposing candidates for President, who do you think would win?

Views of Republican County Chairmen

Kefauver	119
Warren	1329
Undecided	237

Views of Democratic County Chairmen

Kefauver	793
Warren	498
Undecided	326

Views of Democratic County Chairmen

Harriman	1231
Nixon	119
Undecided	267

JANUARY 13
POLITICAL PARTY WORK

Interviewing Date 11/17-22/55
Survey #556-K — Question #6

During the coming year, would you like to take an active part in political party work as a volunteer worker for a party or candidate?

The results, translated into millions:

Democrats who would like to work	9,870,000
Republicans who would like to work	7,030,000

These figures are based upon those expressing an opinion.

SEPTEMBER 10
PRESIDENTIAL TRIAL HEAT

Interviewing Date 8/23-28/56
Survey #569-KA — Question #7a

Suppose the presidential election were being held today. Which ticket would you like to see win — the Republican ticket of Dwight Eisenhower and Richard Nixon or the Democratic ticket of Stevenson and Estes Kefauver?

Eisenhower-Nixon	52%
Stevenson-Kefauver	41
Undecided	7

SEPTEMBER 10
POLITICAL CONVENTIONS

Interviewing Date 8/23-28/56
Survey #569-KA — Question #1

Did you happen to pay any attention at all to the Democratic party convention held in Chicago?

Yes	75%
No	25

Interviewing Date 8/23-28/56
Survey #569-KA — Question #3

Did you happen to pay any attention at all to the Republican party convention held in San Francisco?

Yes	71%
No	29

SEPTEMBER 12
POLITICAL PARTICIPATION

Interviewing Date 8/23-28/56
Survey #569-KA — Question #13

Would you be willing to work as a volunteer for your political party during the coming campaign, or not?

By Sex

Men

Yes	41%
Qualified	7
No	43
Now a worker	2
Don't know	7

Women

Yes	34%
Qualified	9
No	48
Now a worker	1
Don't know	8

Interviewing Date 8/3-8/56
Survey #568-K — Question #13

If you were asked, would you contribute $5 to the campaign fund of the political party you prefer?

Yes	35%
No	50
Don't know	15

SEPTEMBER 14
CIVIL DEFENSE

Interviewing Date 8/3-8/56
Survey #568-K — Question #3

Would you approve or disapprove of a plan to require every man and woman to spend an average of one hour a week in civil defense work?

Approve	64%
Disapprove	23
No opinion	13

By Education

College

Approve	50%
Disapprove	40
No opinion	10

Law

Approve	28%
Disapprove	66
No opinion	6

Medicine

Approve	31%
Disapprove	67
No opinion	2

Journalism

Approve	31%
Disapprove	67
No opinion	2

Government and Politics

Approve	39%
Disapprove	56
No opinion	5

Science

Approve	40%
Disapprove	55
No opinion	5

His high ideals and moral stature
His basic political philosophy
His simplicity and modesty
His nonpartisan approach
His common sense and good judgment

MAY 29

CAMPAIGN SPENDING

Interviewing Date 4/14–19/55
Survey #546–K — Question #13a

There are present laws limiting the amount of money spent for campaigns for Congress. By and large, do you think these laws are lived up to, or not?

Yes, lived up to	16%
No, not lived up to	57
No opinion	27

Interviewing Date 4/14–19/55
Survey #546–K — Question #13b

Do you think the present laws about campaign spending should be made more strict, or not?

Yes, more strict	67%
No, not	12
No opinion	21

Sentiment is relatively uniform on the two questions among major groups in the population. Of particular interest is the fact that both Republicans and Democrats see virtually eye-to-eye on the need for stricter laws.

Education and Religion

Approve	48%
Disapprove	46
No opinion	6

MAY 28

PRESIDENT EISENHOWER

Special Survey

Asked of a cross section of those listed in Who's Who in America: *If someone from abroad were to ask you what accounted for President Eisenhower's great popularity, what would you be likely to tell him?*

The following are listed in order of frequency of mention:

His personality and charm
His humanitarian viewpoint

JUNE 1

DEMOCRATIC PRESIDENTIAL CANDIDATES

Interviewing Date 4/14–19/55
Survey #546–K — Question #18b

If Adlai Stevenson is definitely not a candidate in 1956, which one of the men on this list would you like to see nominated as the Democratic candidate?

Choice of Democratic County Chairmen

East

Humphrey	144
Kennedy	59
McCarthy	16
Undecided	20

Midwest

Humphrey	347
Kennedy	134
McCarthy	14
Undecided	41

South

Humphrey	521
Kennedy	39
McCarthy	46
Undecided	60

West

Humphrey	148
Kennedy	39
McCarthy	17
Undecided	15

Asked of Democratic county chairmen: Suppose the choice narrows down to McCarthy and Kennedy, which one would you prefer?

Choice of Democratic County Chairmen

Kennedy	41%
McCarthy	38
Undecided	21

All chairmen surveyed were also asked whether they believed President Johnson would accept a draft if the convention became deadlocked. The vote was 49% to 39% that he would not.

Richard Nixon is viewed at this time by 78% of the local leaders as the most likely nominee for the Republican party this fall, as opposed to 15% who predict Governor Nelson Rockefeller of New York.

JUNE 5

CAMPAIGN SPENDING

Interviewing Date 5/23–28/68
Survey #762-A Question #12 Index #37

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To make the sample regionally representative of delegate allocation, allowance must be made for the relatively greater number of counties in the South and Midwest in relation to population than is found in the eastern and western sections of the country.

When the vote in the survey reported today is reduced to percentages for each major section of the country, and then brought into line with the number of delegates assigned to each region, a more accurate reflection of the national sentiment of local party leaders is made possible.

This procedure has been employed below:

	Percentage	*Adjusted*
Humphrey	70%	67%
Kennedy	16	19
McCarthy	6	6
Undecided	8	8

Would you favor or oppose a law which would put a limit on the amount of money which can be spent for or by a candidate in his campaign for public office?

Favor	68%
Oppose	24
No opinion	8

By Political Affiliation

Republicans

Favor	72%
Oppose	23
No opinion	5

Democrats

Favor	65%
Oppose	25
No opinion	10

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JUNE 21
FASHION

Interviewing Date 5/11–16/67
Survey #745–A Question #7a

Have you heard or read about the "miniskirt"?

Yes	95%
No	5

Interviewing Date 5/11–16/67
Survey #745–A Question #7b Index #25

All those who said they had heard or read about the "miniskirt," were asked: Do you like or dislike this new style?

Like new style	37%
Dislike it	63

Interviewing Date 5/11–16/67
Survey #745–A Question #7c Index #25

Would you object to a daughter of yours wearing a miniskirt?

Yes	70%
No	30

print and distribute free a pamphlet dealing with the qualifications and views of each candidate, prepared in standard form. The pamphlet would be mailed to all households in each district. Do you think this would be a good idea, or a poor idea?

Good idea	57%
Poor idea	32
No opinion	11

JUNE 28
CHARLES PERCY

Interviewing Date 6/2–7/67
Survey #746–K Question #10a Index #25

Can you identify Charles Percy?

Correct	44%
Incorrect, don't know	56

By Education

	Correct Identification
College	71%
High School	42
Grade School	25

By Political Affiliation

Republicans	51%
Democrats	39
Independents	45

By Region

East	46%
Midwest	51
South	35
West	42

Interviewing Date 6/2–7/67
Survey #746–K Question #10b Index #25

All persons able to identify Percy were asked this question: In general, would you say you have a favorable or unfavorable opinion of Charles Percy?

JUNE 25
CAMPAIGN SPENDING

Interviewing Date 5/11–16/67
Survey #745–A Question #9 Index #25

Would you favor or oppose a law that would put a limit on the total amount of money that could be spent for or by a candidate in his campaign for public office?

Yes	73%
No	16
No opinion	11

Interviewing Date 5/11–16/67
Survey #745–A Question #10 Index #25

To reduce the cost of running for Congress, it has been suggested that the Government

NOVEMBER 24
PRESIDENTIAL ELECTIONS

Interviewing Date 11/9–14/68
Survey #771 Question #12 Index #42

Would you approve or disapprove of an amendment to the Constitution which would do away with the electoral college and base the election of a President on the total vote cast throughout the nation?

Approve	81%
Disapprove	12
No opinion	7

Interviewing Date 11/9–14/68
Survey #771 Question #11 Index #42

Presidential campaigns now last 10 weeks — from the beginning of September to Election Day. Would you favor or oppose shortening presidential campaigns to five weeks?

Favor	60%
Oppose	27
No opinion	13

Approve	43%
Disapprove	44
No opinion	13

DECEMBER 11
A VOTER PROFILE

Interviewing Date 11/9–14/68
Survey #771 Question #6 Index #42

A sample of the 44 million non-voters were asked: What was it that kept you from voting?

15 million were registered but were disinterested or didn't like the candidates.
10 million could have registered but did not.
7 million were sick or disabled.
5 million were prevented from voting by residence requirements.
3 million were away from home.
3 million said they could not leave their jobs.
1 million did not obtain absentee ballots.

Interviewing Date 11/9–14/68
Survey #771 Question #14 Index #42

Would you favor or oppose a law which would put a limit on the total amount of money which can be spent for or by a candidate in his campaign for public office?

Favor	68%
Oppose	24
No opinion	8

NOVEMBER 27
PRESIDENT JOHNSON'S POPULARITY

Interviewing Date 11/9–14/68
Survey #771 Question #1 Index #42

Do you approve or disapprove of the way Lyndon Johnson is handling his job as President?

Interviewing Date 11/9–14/68
Survey #771 Question #5d

Voters were asked: At any time during the campaign did you intend to vote for another candidate other than the one you supported on Election Day?

Yes	26%
No	74

Interviewing Date 11/9–14/68
Survey #771 Question #5f

When did you finally make up your mind definitely to vote for (Richard Nixon) (Hubert Humphrey) (George Wallace)?

One voter in four replied that, even two weeks before the election, he had not "definitely" made up his mind how he would vote.

Interviewing Date 11/9–14/68
Survey #771 Question #5g

For various political offices, did you vote for all the candidates of one party — that

cratic presidential possibilities at this time, the Gallup Poll made use of the Stapel Scalometer, a sensitive scaling device for measuring voter attitudes. The question asked was: How would you rate each of the following men — highly favorable or highly unfavorable?

Views of Democrats and Independents Combined

	Highly Favorable	*Highly Unfavorable*
Edmund Muskie	42%	5%
John Lindsay	35	5
Edward Kennedy	45	14
Hubert Humphrey	40	13
Eugene McCarthy	20	11

Views of All Voters

	Highly Favorable	*Highly Unfavorable*	*Net Favorable*
Muskie	24%	4%	20%
Lindsay	22	6	16
Kennedy	26	13	13
Humphrey	22	11	11
McCarthy	11	9	2

Highly favorable	11%
Highly unfavorable	32

Profile of Wallace Support

By Occupation

	Highly Favorable
Prof. & business	7%
White collar	7
Manual workers	14

By Region

East	6%
Midwest	6
South	24
West	5

By Education

College	5%
High School	11
Grade School	16

By Sex

Men	11%
Women	10

By Political Affiliation

Republicans	8%
Democrats	13

Muskie's greatest appeal is with men, persons living in the East, the college-educated and older persons.

Lindsay also scores highest with persons who have attended college, but in contrast to Muskie, he has more appeal with younger than with older adults. Lindsay also scores well with labor union members — an interesting finding in view of his frequent disputes with organized labor in New York City.

NOVEMBER 19
GEORGE WALLACE

Interviewing Date 10/9–14/70
Survey #815-K Question #12c Index #66

How would you rate Governor George Wallace — highly favorable or highly unfavorable?

NOVEMBER 22
CAMPAIGN SPENDING

Interviewing Date 11/13–17/70
Survey #817-K Question #3 Index #66

Would you favor or oppose a law which would put a limit on the total amount of money which can be spent for or by a candidate in his campaign for public office?

Favor	78%
Oppose	15
No opinion	7

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134. Disclosure of the sources of some campaign contributions received by candidates for federal elective office, political parties, and political committees would improve some voters' ability to evaluate such candidates.

135. Disclosure of the sources and amounts of campaign contributions will deter illegal contributions, among others.

136. In the past, labor unions have made independent expenditures on behalf of candidates in order to avoid the application of 18 U.S.C. Section 610, the statute which prohibits contributions by labor unions.

137. Under the Federal Corrupt Practices Act some political campaigns organized numerous committees which facilitated avoidance of the contribution and expenditure limits imposed by the statute.

138. Dr. Martin Peretz, listed by Common Cause as an individual who contributed more than a total of $25,000 to political candidates in 1972, recently purchased the New Republic Magazine for $380,000. Peretz had earlier helped finance Ramparts Magazine and the Students for a Democratic Society.

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139. The Secretary of the Senate, the Clerk of the House of Representatives, and the Department of Justice have largely failed to enforce prior campaign financing practices legislation.

140. In 1954, then Attorney General Herbert Brownell wrote an Order addressed "To All United States Attorneys, the Federal Bureau of Investigation, and Attorneys of the Criminal Division," which stated, in part:

> "The pertinent provisions of Title 2 (originally Sections 303 to 309 of the Corrupt Practices

Act) require the filing of financial statements by political committees, candidates for the House and Senate and individual contributions with the Clerk of the House of Representatives or the Secretary of the Senate. Although the filing provisions of Title 2 carry a criminal penalty, they are, nevertheless, primarily administrative in nature. It is, therefore, the Department's policy not to institute investigations into possible violations of the laws in question in the absence of a request from the Clerk of the United States House of Representatives or the Secretary of the Senate, whose interest in the administration of these laws is considered paramount to that of the Department of Justice. The Federal Bureau of Investigation and the United States Attorneys should, therefore, refer all complaints involving possible failure

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> to comply with the filing provisions of these statutes directly to the Criminal Division of the Department and should take no further action in the absence of express instructions."

141. The Clerk of the House of Representatives does not make referrals to the Department of Justice for prosecution under the Federal Corrupt Practices Act because he believes that "neither of these 'reporting' sections nor any other section of the FCPA imposes a duty on the Clerk to take any action other than to receive the statements, preserve them for two years and make them open for public inspection."

142. On February 28, 1972, the House adopted House Resolution 819 which created the Special Committee to Investigate Campaign Expenditures, 1972. This Special Committee, which had been used to oversee the conduct

of House campaigns during each Congressional election year since 1946, was given new responsibilities in 1972 when a provision was added requiring the Clerk to consult the Special Committee before taking any enforcement action. As a result of the resolution, the Clerk of the House took no action during 1972 without receiving the counsel of the Special Committee. As to instances involving late filing or failure to file prescribed reports, the

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Committee advised the Clerk that, under the language of the FECA of 1971, he had "no choice but to refer (them) to the Justice Department, as apparent violations . . ." Accordingly, the Clerk referred to the Justice Department 4900 "apparent violations" involving 2702 candidates and 2198 political committees. In addition, the Clerk referred to the Special Committee 18 cases within its jurisdiction, 12 of which had arisen as complaints filed with the Clerk in auditing filed reports. Most, though not all, of these complaints involved violations of the FECA of 1971. In only one of the 18 cases did the Committee refer the case back to the Clerk for action.

143. The Secretary of the Senate, as of March 20, 1973, referred 565 apparent violations of the FECA of 1971 to the Justice Department pursuant to 2 U.S.C. Section 438(d)(1). These involved 19 candidates and 3 political committees for failure to file reports and 173 candidates and 369 committees for late filing. The Secretary did not undertake the audit of the reports submitted by candidates during the 1972 reporting cycle; audits were only conducted after March 20, 1973.

144. Between June 1972 and July 1974, the General Accounting Office referred over 100 violations

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to the Attorney General. Below is a chronological listing of the GAO referrals.

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Referrals by the Office of Federal Elections, Government Accounting Office, to the Attorney General Pursuant to 2 U.S.C. § 438(d)(1)

1.	June 5, 1972	Referral to Attorney General of apparent violation of Section 310 of Federal Election Campaign Act of 1971 prohibiting contributions in the name of another.
2.	June 28, 1972	Referral to Attorney General of apparent violation of Title I of Federal Election Campaign Act of 1971 by New York Times in publishing National Committee for Impeachment's advertisement without required statement.
3.	July 7, 1972	Referral to Attorney General of apparent violation of Section 303 of Federal Election Campaign Act of 1971 by National Committee for Impeachment for failing to register and report.
4.	August 26, 1972	Referral to Attorney General of eleven apparent and possible violations of record keeping and reporting requirements of Title III of Federal Election Campaign Act of 1971 arising from $25,000 Dahlberg-Andreus contribution, $89,000 in Mexican bank checks, and $350,000 cash fund.

5. September 14, 1972 — Announcement of warnings by Director, Office of Federal Elections to treasurers of about 250 political committees whose reports of receipts and expenditures due September 10, under Federal Election Campaign Act of 1971, have not been received.

6. October 6, 1972 — Referral to Attorney General of a report on the financial operations of the McGovern for President - D.C. Committee and apparent violations by the Business and Professional Men and Women for McGovern of Sections 302(c) and 304(b)(2) of Federal Election Campaign Act of 1971, in reporting box office ticket sales for Madison Square Garden rally; by Americans Abroad for McGovern of 18 U.S.C. 613 prohibiting contributions from foreign nationals; by National Labor Committee to elect McGovern-Shriver of 18 U.S.C. 612 in publishing a political ad without proper committee identification.

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7. October 18, 1972 — Announcement of notices issued to 1,247 political committees involved in the November 7 Presidential election that financial reports are due 15 and 5 days before the election.

8. November 1, 1972 — Referral to Attorney General of apparent violations of 18 U.S.C. 610 prohibiting corporate contributions involving National Black Committee

for the Re-election of the President; and 18 U.S.C. 613 prohibiting contributions from foreign nationals involving Finance Committee to Re-elect the President.

9. March 12, 1973 — Referral to Attorney General of apparent violation of Section 302 and 304 of Federal Election Campaign Act of 1971 by Finance Committee to Re-elect the President in failing to record and report $200,000 in cash contributions from Robert L. Vesco.

10. March 14, 1973 — Referral to Attorney General of apparent violations of 18 U.S.C. 610, prohibiting corporate contributions to the Utah Republican State Central Committee and Section 104(b) of Federal Election Campaign Act of 1971 by five newspapers for failing to obtain candidate certification.

11. April 27, 1973 — Referral to Attorney General of apparent violations of Section 302 and 304 of Federal Election Campaign Act of 1971 by Finance Committee to Re-elect the President in failing to maintain records and report cash on hand on April 7, 1972, as well as subsequent disbursements to Theodore F. Brill, Young Republican Organization; Robert Odle, Committee for Re-election of the President; and Phillip Joanou, Executive Director of November Group.

12. May 3, 1973 — Referral to the Attorney General of apparent violations of 18 U.S.C. 612 regarding failure to list names of persons or committees responsible for advertisement on May 17, 1972, in New York Times, financed by The Finance Committee to Re-elect the President.

13. May 18, 1973 — Referral to the Attorney General of apparent violations of Sections 302(c) and (d) and 304(b) of Federal Election Campaign Act of 1971 by the Sanford Carolina Campaign Committee in reporting contributions not supported by any records, failing to itemize receipts over $100, double reporting of expenditures, and failing to itemize more than $19,000 in expenditures of over $100 each; and Sections 1001 and 1621 of 18 U.S.C. by the treasurer's knowingly submitting false reports to a Federal Agency and knowingly using false documentation in support.

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14. May 20, 1973 — Referral to Attorney General of apparent violations of Sections 304 and 305 of Federal Election Campaign Act of 1971 by the Finance Committee to Re-elect the President involving unreported post April 7, 1972 collections and disbursements.

15. May 30, 1973 — Referral to Attorney General of a report on the Republican Party of Wisconsin involving apparent violations of Section 104(b) of Federal Election Campaign Act of 1971 by four newspapers for failing to obtain candidate certification.

16. July 5, 1973 — Referral to Attorney General of apparent violations of Sections 302 and 304 of Federal Election Campaign Act of 1971 and 18 U.S.C. 610 by the Salute to Ted Agnew Night Committee; Sections 1001 and 1621 of 18 U.S.C. and Section 304(b)(4) of Federal Election Campaign Act of 1971 by the Finance Committee to Re-elect the President.

17. July 24, 1973 — Release of a list of political committees registered with Office of Federal Elections which have been recently audited under provisions of the Federal Election Campaign Act of 1971. These committees were those whose reports did not contain violations of Federal laws which would warrant referral to the Department of Justice.

18. July 27, 1973 — Referral to Attorney General a report on the Indiana Republican State Central Committee involving the question of whether a patronage collection system in the State of Indiana, which provides financial support to political parties, violates 18 U.S.C. 600; and referral to the Federal Communications Commission for further investi-

gation of possible violation of Section 104(c) of Federal Election Campaign Act of 1971 by 19 television and 68 radio stations.

19. August 9, 1973 — Referral to Attorney General and Secretary of the Treasury. A report concerning $605,000 in contributions by Walter T. Duncan to committees acting on behalf of two Presidential candidates – The Committee for the Nomination of Hubert H. Humphrey and the Finance Committee to Re-elect the President.

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20. August 13, 1973 — Referral to Attorney General a report on the Wisconsin McGovern for President Committee involving apparent violation of Section 302 of Federal Election Campaign Act of 1971 for failure to maintain complete and accurate records; and referral to the Federal Communications Commission the apparent failure of two radio stations to obtain media certifications.

21. September 7, 1973 — Referral to Attorney General a report on the Shirley Chisholm for President Committee concerning apparent violations by the committee of Sections 302, 303 and 304 of Federal Election Campaign Act of 1971 for failing to name a chairman, maintain complete and accurate records, and file required

reports; Section 104(b) by the New York Amsterdan News for failing to obtain candidate's certification and 18 U.S.C. 610 involving corporate contributions.

22. October 10, 1973 — Referral to Attorney General of 18 political committees registered with CFE who apparently violated the Federal Election Campaign Act of 1971 by failing to submit reports required by section 304(a).

23. October 16, 1973 — Release of a second list of political committees registered with the Office of Federal Elections which have been recently audited under provisions of the Federal Election Campaign Act of 1971. These committees were those whose reports did not contain violations of Federal laws which would warrant referral to the Department of Justice.

24. October 17, 1973 — Referral to Attorney General of apparent violations of sections 304(a) and (b) of the Federal Elections Campaign Act of 1971 by the Massachusetts McGovern for President Committee in failing to report and itemize $66,675 in receipts in excess of $100, failing to report an expenditure of $50,000, and failure to file required reports.

25. November 8, 1973 — Referral to Attorney General of a

report on the Muskie Election Committee, Pittsburgh, Pennsylvania, involving apparent violation of Section 104(b) of Federal Election Campaign Act of 1971 by the *Jewish Chronicle*, a Pittsburgh newspaper, for failing to obtain a certification from the candidate or his authorized representative prior to publishing political ads.

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26. November 13, 1973 — Release of an audit report on the Pennsylvania Finance Committee to Re-elect the President, containing a recommendation that the Comptroller General bring to the Attorney General's attention a possible contribution in-kind by a corporation to the Committee. The recommendation was accepted.

27. November 27, 1973 — Violation of Federal Election Campaign Act by the Nebraska Citizens for McGovern Committee referred to Attorney General for failing to keep and maintain adequate books and records in the 1972 Presidential election campaign.

28. December 11, 1973 — Referral to Attorney General for an apparent violation of section 304(b) of the Federal Election Campaign Act of 1971 by the Conservatives for Nixon-Agnew in fictitiously reporting an expenditure so as to avoid reporting the amount as an outstanding obligation.

29. December 18, 1973 — Referral to Attorney General for apparent violations of the Federal Election Campaign Act of 1971 by the Finance Committee to Re-elect the President involving payments to Murray M. Chotiner in connection with his hiring of two journalists for secret reports on the presidential campaigns of Democratic candidates.

30. December 21, 1973 — Referral to Attorney General of eight political committees registered with OFE who apparently violated the Federal Election Campaign Act of 1971 by failing to submit reports required by section 304(a).

31. January 29, 1974 — Referral to Attorney General citing failure of Communist Party of Illinois to register and file reports with the Office of Federal Elections under the Federal Election Campaign Act of 1971.

32. February 5, 1974 — Referral to Attorney General and Attorney General of Ohio of report on the Ohio Democratic Party citing violations of Federal and State law.

33. April 10, 1974 — Referral to Attorney General of Citizens for McGovern Committee, St. Louis, Missouri for violation of Sec. 302(c) of P.L. 92-225 by failing to maintain complete and accurate financial records and violation of Sec. 304(b) by inability to submit complete

amendments correcting information reported to OFE.

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34. April 11, 1974 — Referral to Dept. of Justice of Hughes Active Citizenship Fund citing failure to report a contribution in kind to the Fund by the Hughes Aircraft Company (administrative services and supplies furnished to Fund by the Company).

35. April 15, 1974 — Referral to Attorney General of Democratic State Central Committee of Oklahoma and the Oklahoma Republican State Committee for apparent violations involving corporate contributions to both committees and failure of the Republican Committee to identify itself in a political advertisement as required by Federal law.

36. April 16, 1974 — Referral to Attorney General and State of Ohio Attorney General of Montgomery County Republican Executive Committee in Dayton, Ohio on question of possible violation as to whether the value of material donated by Chapel Electric Company to refurbish the Committee's headquarters constitutes a corporate contribution in kind.

37. April 26, 1974 — Referral to Attorney General of Nebraska Republican State Central Committee for apparent violation of a Federal law in connection with several corporate contributions.

38. May 17, 1974 — Referral to Attorney General of Nebraska Democratic State Central Committee for apparent violation of law by corporate contribution to committee.

39. June 27, 1974 — Referral to Attorney General of The McGovern For President Committee for apparent failure to obtain and keep complete records of expenditures made for election day expenses and to report details of each such expenditure over $100.

40. July 5, 1974 — Referral to Attorney General of Americans for Agnew Committee for apparent violation by soliciting funds on behalf of Agnew without his authorization and violations for failure to maintain adequate records for all receipts and expenditures and making and receiving of a contribution in the name of another.

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145. As of June 7, 1973, the Department of Justice had not instituted a single civil action to force compliance with the 1971 FECA.

146. Persons who contribute, solicit, receive and expend campaign contributions with improper motives have preferred to do so secretly.

147. The following chart shows individuals solicited by Herbert W. Kalmbach and the amounts they contributed to the Nixon re-election effort.

INDIVIDUALS SOLICITED BY HERBERT W. KALMBACH AND ACTUAL CONTRIBUTIONS

Name	Address	1972 affiliation	Goal	Pre-April 7 [1]	Post [1]	Total
Annenberg, Walter	Wynnewood, Pa.	Ambassador, Great Britain	250,000	250,000	4,000	254,000
Ashley, Theadora	New York, N.Y.	Warner Bros., Kinney Services	150,000	137,055		137,055
Beckett, McDonald	Los Angeles, Calif.	Wellon, Beckett & Associates		12,000	10,000	22,000
Berry, Loren	Dayton, Ohio	L. M. Berry & Co.	100,000	102,000	9,700	111,700
Bobst, Elmer	New York, N.Y.	Warner-Lambert	175,000	100,000	54,500	154,500
Carlson, Edward	Prospect, Ill.	United Air Lines	23,452	23,452	1,500	24,952
Catto, Henry	San Antonio, Tex.	Ambassador—El Salvador [2]	25,000	25,000		25,000
Copley, James	La Jolla, Calif.		50,000	500	29,978	30,478
Crown, Henry	Chicago, Ill.	Henry Crown & Co.	25,000	(C)25,000		25,000
Cummings, Theodore	Beverly Hills, Calif.	Pacific Coast Properties	50-100,000	46,406		46,406
de Roulet, Vincent	Manhasset, N.Y.	Ambassador—Jamaica [3]	100,000	[4] (C)100,000	3,500	103,500
Farkas, Dr. Ruth L.	New York, N.Y.	Alexander's Department Store [5]	300,000		[6] 300,000	300,000
Firestone, Leonard K.	Los Angeles, Calif.	Firestone Tire & Rubber Co. [7]	100,000	100,000	15,100	115,100
Fisher, Max	Detroit, Mich.	Fisher-New Center Co.	100,000	[8] (C)125,000	[8] 125,000	250,000
Ford family	Grosse Pointe, Mich.	Ford Motor Co.	100,000	103,276	24,000	[9] 127,276
Gerstenberg, Richard	Detroit, Mich.	General Motors	100,000	[10] 51,012		51,012
Getty, J. Paul	Los Angeles, Calif.	Getty Oil Co.	100,000	75,000	50,000	125,000
Gould, Kingdon	Laurel, Md.	Ambassador—Luxembourg [11]	100,000	100,000	1,900	101,900
Guest, Raymond	King George, Va.		200,000	200,000	1,000	201,000
Heinz, Henry	Pittsburgh, Pa.	H. J. Heinz Co.	100,000		[12] 103,741	103,741
Hoffman, Wayne	Los Angeles, Calif.	Flying Tiger Corp.	30,000	(C)30,000		30,000
Hume, John	St. Paul, Minn.	Ambassador—Austria	100,000	100,000	500	100,500
Isbell, Marion W.	Phoenix, Ariz.	Ramada Inn	50,000	41,241		41,241
Jones, Thomas U.	Los Angeles, Calif.	Northrop Corp. [13]	100,000	100,000	53,000	153,000
Keith, Willard	do	Marsh, McLennan, Cosgrove & Co.	50,000	56,606		56,606
Lasdon, William	New York, N.Y.	Warner-Lambert	100,000	40,000	69,000	109,000
Levy, Gustave	do	Goldman Sach & Co.	100,000	70,442	21,000	91,442
Lewis, Lawrence	Richmond, Va.	Flagler Hotels	100,000	90,000	6,490	96,490
Liedtke, William	Houston, Tex.	Pennzoil	100,000	23,384	1,000	24,384
McClure, Harold	Alma, Mich.	Patrick Petroleum Co.	50,000		26,100	26,100
McGaw, Foster	Evanston, Ill.	American Hospital Supply Co.	200,000		155,786	155,786
Marshall, Anthony	New York, N.Y.	Ambassador—Trinidad [14]	50,000	48,505		48,505
Maytag, L. B.	Colorado Springs, Colo.	National Airlines	Not solicited	50,000		50,000
Miller, Edward-Employees of	Seattle, Wash.	Time Oil Co.	No goal	[15] 25,000		25,000
Miller, Otto	San Francisco, Calif.	Standard Oil of California	50,000	[16] 50,000		50,000
Mitchell, Charles & Assoc.	New York, N.Y.	City Service	No goal	[17] 20,000		20,000
Moore, John	Dublin, Ireland	Ambassador—Ireland	10,000		10,442	10,442
Mulcahy, John	Bronxville, N.Y.	Ourgleyco. (Pfeltzer Sub.)	3,000,000	573,550	26,000	599,550
Olin, John	St. Louis, Mo.	Olin Corp.	100,000	100,000	4,000	104,000
Spencer				(94,413)		
Pappas, Thomas	Boston, Mass.	Esso Pappas Refinery	100,000	100,672	1,000	101,672
Pfleger, George	Newport Beach, Calif.	Emerson Electric Co.	50,000	47,000		47,000
Robertson, James	San Francisco, Calif.	Goldman Sachs	50,000		32,500	32,500
Rikles, Meshulam	New York, N.Y.	Rapid American Corp.	No goal	50,000	141,000	[18] 191,000
Rockefeller family	do	Rockefeller Foundation	200,000	200,000	69,000	[19] 269,000
Rockwell, Willard F. (employees)	El Segundo, Calif.	N. A. Rockwell	100,000	[20] 88,270	2,500	100,770
Rollin, John	Wilmington, Del.	Rollins International	250,000	245,023	15,500	260,523
Safer, John	Bethesda, Md.	Real estate [21]	250,000	250,000	1,000	251,000
Salvatori, Henry	Los Angeles, Calif.	Grant Oil & Tool Co.	100,000	98,615	12,458	111,073
Scaife, Richard	Pittsburgh, Pa.	Mellon Banking-Gulf Oil	1,000,000	1,000,000	3,500	1,003,500
Schreiber, Taft	Los Angeles, Calif.	Music Corp. of America	100,000	66,101	9,700	75,801
Schuler, John	Leeds, Ala.	Anderson Electric Co.	25,000	17,018	10,536	27,554
Shaheen, John	New York, N.Y.	MacMillan Ring Free Oil Co.	100,000		104,000	104,000
Simon, William	do	Salmon Bros.	100,000	[22] 100,000	2,500	102,500
Spater, George	Chicago, Ill.	American Airlines [23]	100,000	75,000		75,000
Stein, Jules	Los Angeles, Calif.	Music Corp. of America	150,000	117,822		117,822
Steinbrenner, George	Cleveland, Ohio	American Ship Building Co. [24]	100,000	100,000		100,000
Stewart, James E.	Greenwich, Conn.	Lone Star Ind. (Union Oil)	50,000	(C)50,000	47,525	97,525
Stone, Clement	Chicago, Ill.	Combined Insurance Co.	2,000,000	2,000,000	73,054	2,073,054
Symington, J. Fife	Paradise Valley, Ariz.	Ambassador—Trinidad & Tobago [25]	100,000	100,000	1,500	101,500
Terra, Daniel J.	Kenilworth, Ill.	Lawter Chemical Co.	250,000	250,000	5,000	255,000
Townsend, Lynn, Employees	Detroit, Mich.	Chrysler Corp. [26]	100,000	[27] 117,626		117,626
Walker, Elisha	New York, N.Y.	Dir., Petroleum Corp. of America	100,000	100,000		100,000
Wallace, De Witt	Mt. Kisco, N.Y.	Readers Digest	100,000	100,000	3,000	103,000
Warner, Jack	Los Angeles, Calif.	Warner Bros.	100,000	100,000	10,500	110,500
Washburn, Mrs. Donald	Corona del Mar, Calif.		50,000	[28] 50,000	10,520	60,520
Watson, Arthur	New Canaan, Conn.	Ambassador—France [29]	300,000	300,000	3,000	303,000
Watson, Tom	Greenwich, Conn.	Chm., Exec. Comm., IBM	25,000		15,500	15,500
Watt, R. A.	Los Angeles, Calif.	Watt Industries	100,000	86,560	4,000	90,560

INDIVIDUALS SOLICITED BY HERBERT W. KALMBACH AND ACTUAL CONTRIBUTIONS—Continued

Name	Address	1972 affiliation	Goal	Pre-April 7 [1]	Post [1]	Total
Webb, Dell	North Hollywood, Calif.	Chm., Del E. Webb Corp.	50,000		87,676	87,676
Willard, Laberon	Baltimore, Md.	Chm., Commercial Credit Co.	3,000	3,000	6,250	9,250
Whitney, Cornelius V.	Lexington, Ky.	Whitney Industries	50,000	[30] 9,000	42,000	51,000
Total			13,441,452	8,835,040	1,823,356	10,658,396

[1] The totals for the pre-April 7, 1972 contributions came from one of two sources: (a) The "Rose Mary Woods List." This is a list of pre-April 7, 1972 contributors obtained from the White House; (b) The "Common Cause List." This is a list of pre-April 7, 1972 contributors which was ordered filed by Judge Joseph R. Waddy in the case Common Cause, et al v. Finance Committee to Reelect the President, et al. The list was filed in United States District Court, Washington, D.C. on September 28, 1973 by Kenneth Wells Parkinson, attorney for FCRP.

[2] The "GAO List" the totals for the post-April 7, 1972 contributions came from a list supplied the Office of Federal Election of the General Accounting Office (GAO). Section 304 of Federal Election Campaign Act of 1971 requires disclosure of all contributions in excess of $100 to the Office of Federal Elections.

[3] Appointed Chief of Protocol for the White House on April 2, 1974.

[4] Resigned as Ambassador to Jamaica, August 1973. (See section on Ambassadorships.)

[5] Appointed as Ambassador to Luxembourg on February 1973. (See section on Ambassadorships.)

[6] Appointed as Ambassador to Belgium in March 1974, Chairman of the California Finance Committee to Re-elect the President.

[7] In an affidavit to the Southern District Court of New York, Fisher said $40,000 came from his safe deposit box at the Detroit Bank and Trust Company and the remaining $85,000 from personal funds retained in a safe located in his home. This is an approximate total. The contribution was in the form of Marathon Oil Co. stock and was given on January 16, 1973.

[8] Represents contributions by Henry Ford, Mrs. Edsell Ford and Benson Ford.

[9] This figure was obtained from the Rose Mary Woods list under the heading of Employees of General Motors. Gerstenberg's personal contribution was $3,500 which was included in the total.

[10] Appointed Ambassador to the Netherlands in September 1973.

[11] Includes $10,000 by Heinz U.S.A., Division of H. J. Heinz & Co.

[12] See section on Corporate Contribution for Northrop Corp.

[13] Appointed Ambassador to Kenya in December 1973.

[14] Listed as employees of Time Oil Co. on Rose Mary Woods list.

[15] Listed as employee of Standard Oil of California on Rose Mary Woods list. Listed as Otto Miller and Associates on the Common Cause list.

[16] Listed as Employees of City Service on the Rose Mary Woods list and as Charles Mitchell and Associates on the Common Cause list. Mitchell is deceased and no one at City Service acknowledges to any knowledge of the contribution.

[17] Rikles also gave Hubert Humphrey $100,000.

[18] Includes contributions by David John and Lawrence Rockefeller and Abby R. Mauze.

[19] Rose Mary Woods list under employees of North American Rockwell. Common Cause list shows Rockwell personally contributed $1,510 prior to April 7, 1972.

[20] See section on Ambassadorships.

[21] Rose Mary Woods list as employees of Salomon Bros. Common Cause list credits Simon with $15,000 pre-April 7, 1972.

[22] See section on Corporate Contributions for American Airlines, Inc.

[23] See section on Corporate Contributions for American Ship Building Co.

[24] Resigned as Ambassador to Trinidad and Tobago in November 1971. At that time he had already agreed to a contribution. (See section on Ambassadorships.)

[25] See above section for more detail.

[26] Rose Mary Woods list shows the contribution was Mrs. Donald M. Washburn but Common Cause list indicates it was from Gene Washburn.

[27] Resigned as Ambassador after making contribution.

[28] Whitney contributed $250,000 in June 1971 which was returned in October or November 1971. For more details see section on Ambassadorships.

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148. There are no public records disclosing the extent to which individual Senators or members of the House employ the frank.

149. Trust in government, or political trust, as these terms are used by political scientists in the tables in paragraphs 150-154, *infra*, refer to the basic evaluative or affective orientation of the public towards the government. The converse of political trust is political cynicism and alienation.

150. The following chart depicts political trust and party identification in the period 1964-1972.

B) Political Trust and Party Identification, 1964-72

	Strong Democrat	Weak Democrat	Independent Democrat	Independent	Independent Republican	Weak Republican	Strong Republican	Total
Trust in Government								
1964: Low	16.5	19.8	17.3	29.1	31.2	26.6	37.8	22.7
Middle	33.1	39.4	37.0	39.8	38.7	40.1	37.2	37.2
High	50.4	40.8	45.7	31.1	30.0	33.3	25.0	40.0
	[n = 393]	[n = 358]	[n = 127]	[n = 103]	[n = 80]	[n = 142]	[n = 156]	[n = 1409]
1968: Low	24.8	33.2	31.2	49.2	32.2	30.9	33.8	32.6
Middle	42.9	42.6	43.7	36.4	50.4	46.6	53.4	44.1
High	32.3	24.2	25.0	14.4	17.4	22.5	12.8	23.2
	[n = 266]	[n = 331]	[n = 128]	[n = 132]	[n = 115]	[n = 191]	[n = 133]	[n = 1296]
1970: Low	44.4	43.4	44.1	46.8	38.9	37.9	34.3	42.3
Middle	35.9	37.2	32.3	34.1	47.3	40.0	39.9	37.4
High	19.7	19.4	23.6	19.0	13.7	22.1	25.9	20.4
	[n = 304]	[n = 366]	[n = 161]	[n = 205]	[n = 131]	[n = 235]	[n = 143]	[n = 1545]
1972: Low	53.7	44.0	51.5	45.2	33.5	35.1	32.4	42.8
Middle	31.2	36.8	32.8	35.1	41.2	36.7	40.2	36.2
High	15.1	19.2	15.8	19.7	25.3	28.2	27.5	21.0
	[n = 324]	[n = 582]	[n = 241]	[n = 279]	[n = 245]	[n = 319]	[n = 244]	[n = 2234]

Table 1. Responses to Cynicism Items, 1964–1970

How much of the time do you think you can *trust* the government in Washington to do what is right—*just about always, most of the time*, or *only some of the time?*

	1964	1966	1968	1970
Always	14.0%	17.0%	7.5%	6.4%
Most of the Time	62.0	48.0	53.4	47.1
Only Some of the Time[a]	22.0	31.0	37.0	44.2
Don't know	2.0	4.0[b]	2.1	2.3
Total	100.0%	100.0%	100.0%	100.0%
(*N*)[c]	(4658)	(1291)	(1557)	(1514)

Would you say the government is pretty much run by *a few big interests* looking out for themselves or that it is run for the *benefit of all* the people?

	1964	1966	1968	1970
For Benefit of All	64.0%	53.0%	51.8%	40.6%
Few Big Interests[a]	29.0	34.0	39.2	49.6
Other; depends; both checked	4.0	6.0	4.6	5.0
Don't know	3.0	7.0	4.3	4.8
Total	100.0%	100.0%	100.0%	100.0%

Do you think that people in the government waste *a lot* of the money we pay in taxes, waste *some* of it or *don't waste very much of it*?[d]

	1964	1966	1968	1970
Not Much	6.5%	—	4.2%	3.7%
Some	44.5	—	33.1	26.1
A Lot[a]	46.3	—	57.4	68.7
Don't know; not ascertained	2.7	—	5.3	1.5
Total	100.0%		100.0%	100.0%

Do you feel that almost all of the people running the government are smart people who usually *know what they are doing*, or do you think that quite a few of them *don't seem to know what they are doing?*[d]

	1964	1966	1968	1970
Know What They're Doing	68.2%	—	56.2%	51.2%
Don't Know What They're Doing[a]	27.4	—	36.1	44.1
Other; depends	1.9	—	1.8	2.3
Don't know; not ascertained	2.5	—	5.9	2.4
Total	100.0%		100.0%	100.0%

Do you think that *quite a few* of the people running the government are a little crooked, *not very many* are, or do you think *hardly any* of them are crooked at all?[d]

	1964	1966	1968	1970
Hardly Any	18.2%	—	18.4%	15.9%
Not Many	48.4	—	49.3	48.8
Quite a Lot[a]	28.0	—	24.8	31.0
Don't know; not ascertained	5.4	—	7.5	4.3
Total	100.0%		100.0%	100.0%

[a] Indicates response interpreted as "cynical."
[b] Includes 1% coded "It depends."
[c] The sample size for each of the years applies to all five items. The 1964 *N* is weighted.
[d] These items were not included in the 1966 election study interview schedule.

151. The following table sets forth responses to a survey designed to test political trust in the national government in the period 1964-1972.

152. The following table reflects the level of political activities of citizens with varying levels of potential trust in the period 1964-1972.

Table 5. Political Trust and Political Involvement, 1964–1972
(percentages down)

	Trust in Government			
1964:	Low ($n = 324$)	Middle ($n = 531$)	High ($n = 569$)	Total ($n = 1424$)
Voted	74.8	81.2	77.1	77.7
Did not vote	25.2	18.8	22.9	22.3
Paid a great deal of attention to campaign	43.5	40.1	35.5	38.2
Paid some attention	33.0	37.5	39.4	36.6
Paid little attention	23.5	22.4	25.1	25.1
Pay a great deal of attention to governmental affairs	37.5	32.2	25.3	30.3
Some attention	34.8	40.1	47.4	41.6
Little attention	16.3	16.6	17.5	16.9
Have written to a public official	21.3	18.4	13.3	16.9
Have never written	78.7	81.6	86.7	83.1
Campaign activity index:*				
Performed all five activities	2.2	1.3	0.7	1.2
Performed four activities	2.5	1.9	0.5	1.5
Performed three activities	4.0	2.3	3.1	3.0
Performed two activities	9.0	8.3	10.7	9.3
Performed one activity	26.5	30.1	23.6	26.4
No campaign activities	55.9	56.1	61.4	58.6

	Trust in Government			
1968:	Low ($n = 427$)	Middle ($n = 574$)	High ($n = 303$)	Total ($n = 1304$)
Voted	70.6	78.6	76.3	78.5
Did not vote	29.4	21.4	23.7	21.5
Paid a great deal of attention to campaign	39.3	40.3	38.8	38.9
Paid some attention	37.2	42.4	45.1	40.4
Paid little attention	23.4	17.4	16.1	20.8
Follow public affairs most of the time	37.1	31.9	28.7	33.0
Some of the time	23.8	34.0	34.0	30.7
Now and then	18.6	18.8	19.5	18.7
Hardly at all	20.5	15.3	17.8	17.6
Have written to a public official	21.5	18.0	19.4	19.8
Have never written	78.5	82.0	80.6	80.2
Campaign activity index:*				
Performed all five activities	0.0	1.6	1.0	0.9
Performed four activities	2.3	1.7	1.0	1.8
Performed three activities	3.5	5.4	2.6	4.1
Performed two activities	7.0	9.6	5.9	7.9
Performed one activity	25.1	27.5	26.2	26.6
No campaign activities	62.1	54.2	63.3	58.7

Table 5.—*Continued*

	Trust in Government			
	Low ($n=647$)	Middle ($n=566$)	High ($n=309$)	Total ($n=1522$)
1970:				
Voted	56.2	60.1	57.6	57.6
Did not vote	43.7	39.9	42.4	42.4
Paid a great deal of attention to campaign	31.1	36.0	33.0	33.1
Paid some attention	41.8	43.0	47.2	43.2
Paid little attention	27.1	21.0	19.8	23.7
Campaign activity index:*				
Performed all five activities	0.9	1.5	1.3	1.2
Performed four activities	1.7	3.4	2.5	2.5
Performed three activities	2.3	4.5	3.1	3.2
Performed two activities	4.8	5.5	6.9	5.4
Performed one activity	22.3	22.8	18.9	21.6
No campaign activities	68.0	62.3	67.3	66.0

	Trust in Government			
	Low ($n=931$)	Middle ($n=786$)	High ($n=454$)	Total ($n=2171$)
1972:				
Voted	69.7	76.0	75.1	72.8
Did not vote	30.3	24.0	24.9	27.2
Paid a great deal of attention to campaign	31.9	34.4	32.8	31.5
Paid some attention	41.1	42.4	44.8	41.1
Paid little attention	27.0	23.2	22.4	27.4
Follow public affairs most of the time	35.7	40.1	33.5	36.6
Some of the time	34.0	36.9	40.1	36.2
Now and then	17.4	14.2	15.9	15.9
Hardly at all	12.9	8.8	10.6	11.4
Have written to a public official	23.4	30.1	30.2	27.1
Have never written	76.6	69.9	69.8	72.9
Campaign activity index:*				
Performed all five activities	0.4	0.9	0.7	0.6
Performed four activities	1.7	0.6	2.2	1.4
Performed three activities	3.1	3.8	3.3	3.4
Performed two activities	7.9	10.9	10.1	9.4
Performed one activity	26.0	24.7	24.7	25.0
No campaign activities	60.8	59.1	59.0	60.2

* This index was created by simply summing the number of these campaign activities performed. The activities were: trying to influence someone's vote, attending a political meeting or rally, belonging to a political club or organization, working for a candidate, and displaying a button or bumper-sticker.

[146]

153. The following report reflects the result of a survey conducted by the Gallup Poll in mid-1973.

[147]

At Mid-Point in 1973

PUBLIC'S MOOD REVEALS SERIOUS LACK OF CONFIDENCE IN KEY U.S. INSTITUTIONS

by George Gallup

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PRINCETON, N.J., June 30 – The mood of America at mid-point in 1973 is one of disillusionment, revealing a serious lack of confidence in key American institutions.

For example, it is doubtful that at any time in this century politics has commanded so little respect, although the American people have never held politics or politicians in particularly high esteem. A key contributing factor has undoubtedly been Watergate.

In the latest Gallup survey, two persons in three express the belief that there are Senators and Representatives in Congress who won election by using "unethical and illegal methods in their campaigns." In addition, one-fifth of persons interviewed estimate that half or more of the 535 legislators now in Congress have attained office through questionable means.

The following questions were asked in the latest nationwide Gallup survey:

"Do you believe there are Senators and Representatives now serving in Congress who won election by using unethical and illegal methods in their campaigns?"

"Just your best guess – of the 535 present members of Congress, how many got there by using unethical or illegal campaign methods?"

Here are the findings based on both questions:

[148]

PUBLIC'S ESTIMATE OF NUMBER WHO USE UNETHICAL OR ILLEGAL METHODS

Less than one-quarter	21
One-quarter to one-half	12
One-half to three-quarters	11
Three-quarters to all	9
Can't say how many	14
None	33

The findings in the table above are based on in-person interviews with 1,552 adults, 18 and older, interviewed during the period June 1-4 in more than 300 scientifically selected localities across the nation.

The public's lack of confidence is also apparent in their attitudes regarding other key institutions in American life, as revealed by a recent survey in which eight institutions were rated.

"Big business" is rated lowest of the eight, with only one person in four (26 per cent) saying they have "a great deal" or "quite a lot" of respect or confidence in big business.

Labor unions fare little better in terms of winning respect among the American people, with only 30 per cent saying they have "a great deal" or "quite a lot" of respect or confidence in business.

Only "the church" and "the public schools" are accorded a high confidence rating from a majority of persons interviewed. However, at least one-third of survey respondents express only some or little confidence in or respect for these two institutions.

Following is the question asked in a recent survey and the national findings, excluding the "no opinion" percentages:

"I am going to read you a list of institutions in American society. Would you tell me how much respect and confidence you, yourself, have in each one – a great deal, quite a lot, some, or very little?"

[149]

	A great deal, Quite a lot	Some, Very little, None
The church or organized religion	66	32
The public schools	58	38
The Supreme Court	44	45
Congress	42	50
Newspapers	39	58
Television	37	61
Labor unions	30	60
Big business	26	60

The findings in the table above are based on in-person interviews with 1,531 adults interviewed during the period May 4-7.

[150]

154. The following reports reflect surveys conducted by the Harris Poll:

[151]

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TABLE 024A

Q.6E - DO YOU FEEL YOU HAVE MORE, LESS OR SAME CONFIDENCE IN THE FEDERAL GOVERNMENT COMPARED TO 5 YEARS AGO? (COL 171)

	TOTAL	REGION: EAST	REGION: MID-WEST	REGION: SOUTH	REGION: WEST	AREA: CITIES	AREA: SUBURBS	AREA: TOWNS	AREA: RURAL	AGE: 18-29	AGE: 30-49	AGE: 50 & OVER	WHITE: PROTESTANT	WHITE: CATHOLIC	JEWISH	TYPE OF WORK: PROF	TYPE OF WORK: EXEC	TYPE OF WORK: SKILLED LBR	TYPE OF WORK: WHITE COLLAR	SEX: MEN	SEX: WOMEN
TOTAL ANS	16085	4491	4366	4443	2785	5191	4310	2360	4224	4483	5617	5965	8713	3586	464	2516	1929	4586	1347	8087	7998
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
MORE CONFIDENCE	1690	477	331	617	265	580	489	212	409	648	455	587	889	397	-	205	138	480	172	867	823
	11%	11%	8%	14%	10%	11%	11%	9%	10%	14%	8%	10%	10%	11%	-	8%	7%	10%	13%	11%	10%
LESS CONFIDENCE	9248	2722	2568	2235	1723	3100	2616	1406	2126	2537	3419	3292	4796	2217	348	1607	1170	2589	825	4624	4624
	57%	60%	59%	50%	62%	60%	61%	59%	50%	57%	61%	55%	55%	61%	75%	64%	60%	57%	61%	56%	58%
ABOUT THE SAME	4432	1146	1324	1369	593	1227	1041	678	1486	910	1639	1863	2678	846	86	627	551	1276	293	2306	2126
	28%	26%	30%	31%	21%	24%	24%	29%	35%	20%	29%	31%	31%	24%	19%	25%	29%	28%	22%	29%	27%
NOT SURE	715	146	143	222	204	284	164	64	203	388	104	223	350	126	30	77	70	241	57	290	425
	4%	3%	3%	5%	7%	5%	4%	3%	5%	9%	2%	4%	4%	4%	6%	3%	4%	5%	4%	4%	5%

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TABLE 025A

Q.6F - WHY DO YOU FEEL THAT WAY ABOUT THE BASE....ANSWERS IN Q.6E

	TOTAL	REGION: EAST	REGION: MID-WEST	REGION: SOUTH	REGION: WEST	AREA: CITIES	AREA: SUBURBS	AREA: TOWNS	AREA: RURAL
TOTAL ANS	15659	4420	4161	4360	2718	5088	4227	2244	4100
	100%	100%	100%	100%	100%	100%	100%	100%	100%
MORE CONFIDENCE									
WATERGATE HAS OPENED UP THINGS/MADE PEOPLE MORE AWARE-WILL WATCH OFFICIALS,BE MORE CAREFUL	258	74	77	80	27	41	120	20	77
	2%	2%	2%	2%	1%	1%	3%	1%	2%
NIXON ENDED WAR	454	195	30	145	84	170	129	57	98
	3%	4%	1%	3%	3%	3%	3%	3%	2%
DOING BEST JOB HE CAN	672	159	202	222	89	233	152	61	226
	4%	4%	5%	5%	3%	5%	4%	3%	6%
ANY OTHER ANSWER	855	232	136	356	131	278	186	131	260
	5%	5%	3%	8%	5%	5%	4%	6%	6%
LESS CONFIDENCE									
WATERGATE BROUGHT OUT THINGS-CORRUPTION, SCANDALS-CAN'T TRUST PUBLIC OFFICALS	6156	1873	1652	1499	1132	2000	1827	888	1441
	39%	42%	40%	34%	42%	39%	43%	40%	35%
CAN'T TRUST EXECUTIVE BRANCH	1973	582	657	350	384	732	573	314	354
	13%	13%	16%	8%	14%	14%	14%	14%	9%
NIXON IS LYING, COVERING UP	366	132	68	61	105	119	115	22	110
	2%	3%	2%	1%	4%	2%	3%	1%	3%
NIXON SHOULD GIVE UP THE TAPES	69	12	37	8	12	8	35	-	26
	*	*	1%	*	*	*	1%	-	1%
WATERGATE IS BAD FOR U.S. IMAGE ABROAD	169	16	74	-	79	29	44	44	52
	1%	*	2%	-	3%	1%	1%	2%	1%
ELLSBERG BREAKIN/ BURGLARIES	89	26	7	17	39	33	26	10	20
	1%	1%	*	*	1%	1%	1%	*	*
WIRETAPS/BUGGING PEOPLE	169	55	22	46	46	75	57	10	27
	1%	1%	1%	1%	2%	1%	1%	*	1%
WE WEREN'T TOLD TRUTH ABOUT VIETNAM	428	119	180	14	115	182	148	28	70
	3%	3%	4%	*	4%	4%	4%	1%	2%

	AGE: 18-29	AGE: 30-49	AGE: 50 & OVER	WHITE: PROTESTANT	WHITE: CATHOLIC	WHITE: JEWISH	TYPE OF WORK: PROF	TYPE OF WORK: EXEC	TYPE OF WORK: SKILLED LBR	TYPE OF WORK: WHITE COL-LAR	SEX: MEN	SEX: WOMEN
TOTAL ANS	4318	5509	5812	8439	3517	464	2470	1859	4443	1337	7887	7772
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
MORE CONFIDENCE												
WATERGATE HAS OPENED UP THINGS/MADE PEOPLE MORE AWARE-WILL WATCH OFFICIALS,BE MORE CAREFUL	97	55	106	170	58	-	40	33	53	13	101	157
	2%	1%	2%	2%	2%	-	2%	2%	1%	1%	1%	2%
NIXON ENDED WAR	145	173	136	197	151	7	76	53	169	19	232	222
	3%	3%	2%	2%	4%	2%	3%	3%	4%	1%	3%	3%
DOING BEST JOB HE CAN	125	200	347	458	159	-	93	44	201	113	315	357
	3%	4%	6%	5%	5%	-	4%	2%	5%	8%	4%	5%
ANY OTHER ANSWER	296	242	317	431	200	-	84	76	227	66	541	314
	7%	4%	5%	5%	6%	-	3%	4%	5%	5%	7%	4%
LESS CONFIDENCE												
WATERGATE BROUGHT OUT THINGS-CORRUPTION, SCANDALS-CAN'T TRUST PUBLIC OFFICALS	1738	2177	2241	3276	1411	300	1053	771	1817	590	3137	3019
	40%	40%	39%	39%	40%	65%	43%	41%	41%	44%	40%	39%
CAN'T TRUST EXECUTIVE BRANCH	574	660	739	906	497	117	370	316	403	207	1041	932
	13%	12%	13%	11%	14%	25%	15%	17%	9%	15%	13%	12%
NIXON IS LYING, COVERING UP	127	152	87	229	26	15	62	48	141	30	222	144
	3%	3%	1%	3%	1%	3%	3%	3%	3%	2%	3%	2%
NIXON SHOULD GIVE UP THE TAPES	8	24	37	32	19	10	20	10	12	-	22	47
	*	*	1%	*	1%	2%	1%	1%	*	-	*	1%
WATERGATE IS BAD FOR U.S. IMAGE ABROAD	33	61	75	88	20	-	89	12	44	-	104	65
	1%	1%	1%	1%	1%	-	4%	1%	1%	-	1%	1%
ELLSBERG BREAKIN/ BURGLARIES	13	12	64	29	33	-	42	-	13	7	41	48
	*	*	1%	*	1%	-	2%	-	*	1%	1%	1%
WIRETAPS/BUGGING PEOPLE	48	42	79	82	13	29	36	10	45	10	68	101
	1%	1%	1%	1%	*	6%	1%	1%	1%	1%	1%	1%
WE WEREN'T TOLD TRUTH ABOUT VIETNAM	113	219	96	218	75	31	135	66	87	35	219	209
	3%	4%	2%	3%	2%	7%	5%	4%	2%	3%	3%	3%

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TABLE 025A
CONTINUED -1

	TOTAL	REGION EAST	REGION MID-WEST	REGION SOUTH	REGION WEST	AREA CITIES	AREA SUBURBS	AREA TOWNS	AREA RURAL
DON'T INFORM PEOPLE ABOUT WHAT'S GOING ON-DO WHAT THEY PLEASE	530	191	107	145	87	179	193	70	88
	3%	4%	3%	3%	3%	4%	5%	3%	2%
EVERYTHING'S GOING DOWNHILL/NOT GETTING BETTER/IN BAD SHAPE	875	272	220	165	218	263	150	174	288
	6%	6%	5%	4%	8%	5%	4%	8%	7%
INFLATION/HIGH COST OF LIVING/HIGH PRICES	1401	413	405	297	286	539	449	174	239
	9%	9%	10%	7%	11%	11%	11%	8%	6%
TAXES KEEP RISING	453	191	142	66	54	170	104	50	129
	3%	4%	3%	2%	2%	3%	2%	2%	3%
ENERGY CRISIS	201	23	78	53	47	62	67	10	62
	1%	1%	2%	1%	2%	1%	2%	*	2%
FOOD SHORTAGE	280	41	103	74	62	84	63	63	70
	2%	1%	2%	2%	2%	2%	1%	3%	2%
GOVT DOESN'T CARE ABOUT WORKING MAN,ONLY BIG BUSINESS	503	167	174	98	64	170	159	52	122
	3%	4%	4%	2%	2%	3%	4%	2%	3%
ANY OTHER ANSWER	1884	462	494	542	386	603	473	311	497
	12%	10%	12%	12%	14%	12%	11%	14%	12%
SAME CONFIDENCE	1988	532	581	596	279	656	533	226	573
	13%	12%	14%	14%	10%	13%	13%	10%	14%
HAVEN'T SEEN ANY-THING ACCOMPLISHED/ ANY IMPROVEMENTS	759	211	199	228	121	108	230	93	328
	5%	5%	5%	5%	4%	2%	5%	4%	8%
ANY OTHER ANSWER	779	187	170	224	198	331	165	82	201
	5%	4%	4%	5%	7%	7%	4%	4%	5%
I'VE CHANGED/BECOME MORE AWARE OF THINGS -WAS TOO YOUNG/DID NOT THINK ABOUT IT 5 YRS AGO	842	244	123	383	92	283	129	152	278
	5%	6%	3%	9%	3%	6%	3%	7%	7%
DO NOT KNOW									

	AGE 18-29	AGE 30-49	AGE 50 & OVER	WHITE PROTESTANT	WHITE CATHOLIC	JEWISH	TYPE OF WORK PROF	TYPE OF WORK EXEC	TYPE OF WORK SKILLED LBR	TYPE OF WORK WHITE COLLAR	SEX MEN	SEX WOMEN
	133	259	138	243	140	23	118	64	137	55	314	216
	3%	5%	2%	3%	4%	5%	5%	3%	3%	4%	4%	3%
	243	379	253	429	183	24	118	190	201	51	463	412
	6%	7%	4%	5%	5%	5%	5%	10%	5%	4%	6%	5%
	362	530	509	617	411	62	195	202	412	142	730	671
	8%	10%	9%	7%	12%	13%	8%	11%	9%	11%	9%	9%
	121	139	193	214	172	-	71	60	159	19	209	244
	3%	3%	3%	3%	5%	-	3%	3%	4%	1%	3%	3%
	23	94	84	89	62	-	20	11	43	11	110	91
	1%	2%	1%	1%	2%	-	1%	1%	1%	1%	1%	1%
	21	145	114	182	58	-	54	33	56	26	185	95
	*	3%	2%	2%	2%	-	2%	2%	1%	2%	2%	1%
	96	258	149	235	120	11	59	34	198	34	320	183
	2%	5%	3%	3%	3%	2%	2%	2%	4%	3%	4%	2%
	422	828	634	1166	356	39	281	225	590	154	1044	840
	10%	15%	11%	14%	10%	8%	11%	12%	13%	12%	13%	11%
	376	714	878	1241	339	38	331	232	584	171	1055	933
	9%	13%	15%	15%	10%	8%	13%	12%	13%	13%	13%	12%
	119	326	314	413	209	18	125	138	197	35	370	389
	3%	6%	5%	5%	6%	4%	5%	7%	4%	3%	5%	5%
	641	101	37	391	174	20	101	67	261	66	311	468
	15%	2%	1%	5%	5%	4%	4%	4%	6%	5%	4%	6%
	224	265	353	408	140	-	96	59	181	46	387	455
	5%	5%	6%	5%	4%	-	4%	3%	4%	3%	5%	6%

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TABLE 110A

Q.21A - WHICH THREE OR FOUR OF THE FOLLOWING BEST DESCRIBE MOST ELECTED FEDERAL OFFICIALS? (COL 464,465)

	REGION				AREA				AGE			WHITE PROTESTANT	WHITE CATHOLIC	WHITE JEWISH	TYPE OF WORK				SEX	
	TOTAL	EAST	MID-WEST	SOUTH	WEST	CITIES	SUBURBS	TOWNS	RURAL	18-29	30-49	50 & OVER				PROF	EXEC	SKILLED LBR	WHITE COLLAR	MEN	WOMEN
TOTAL ANS	16069	4494	4341	4438	2796	5169	4317	2367	4216	4486	5655	5908	8699	3586	471	2520	1939	4595	1347	8044	8025
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
1-COURAGEOUS	1923	408	581	678	256	540	403	245	735	350	529	1044	1336	299	28	320	208	462	174	741	1182
	12%	9%	13%	15%	9%	10%	9%	10%	17%	8%	9%	18%	15%	8%	6%	13%	11%	10%	13%	9%	15%
2-BUREAUCRATIC	2534	615	812	590	517	797	756	404	577	930	850	754	1355	543	112	635	289	621	252	1394	1140
	16%	14%	19%	13%	18%	15%	18%	17%	14%	21%	15%	13%	16%	15%	24%	25%	15%	14%	19%	17%	14%
3-IDEALISTIC	1624	477	470	409	268	390	548	274	412	547	540	537	890	457	17	343	153	389	129	841	783
	10%	11%	11%	9%	10%	8%	13%	12%	10%	12%	10%	9%	10%	13%	4%	14%	8%	8%	10%	10%	10%
4-OUT FOR THEMSELVES	4640	1426	1069	1123	1022	1732	1223	568	1117	1619	1655	1366	2342	919	130	643	454	1449	387	2417	2223
	29%	32%	25%	25%	37%	34%	28%	24%	26%	36%	29%	23%	27%	26%	28%	26%	23%	32%	29%	30%	28%
5-DEDICATED TO HARD WORK	3566	1014	948	1034	570	988	948	675	955	785	1314	1447	2120	867	94	733	481	942	278	1561	2005
	22%	23%	22%	23%	20%	19%	22%	29%	23%	17%	23%	24%	24%	24%	20%	29%	25%	21%	21%	19%	25%
6-PLAY IT SAFE	2476	751	615	650	460	832	849	290	505	801	968	707	1158	513	88	521	295	646	221	1474	1002
	15%	17%	14%	15%	16%	16%	20%	12%	12%	18%	17%	12%	13%	14%	19%	21%	15%	14%	16%	18%	12%
7-HONEST	2150	523	687	617	323	499	464	391	796	334	641	1175	1538	353	26	305	200	587	131	1198	952
	13%	12%	16%	14%	12%	10%	11%	17%	19%	7%	11%	20%	18%	10%	6%	12%	10%	13%	10%	15%	12%
8-JUST SERVING TIME	1229	395	262	327	245	445	337	71	376	341	471	417	614	282	32	89	143	438	127	651	578
	8%	9%	6%	7%	9%	9%	8%	3%	9%	8%	8%	7%	7%	8%	7%	4%	7%	10%	9%	8%	7%
9-INTELLIGENT,BRIGHT	4394	1389	1212	1118	675	1423	1314	681	976	1278	1528	1588	2363	1114	155	718	673	1118	453	2039	2355
	27%	31%	28%	25%	24%	28%	30%	29%	23%	28%	27%	27%	27%	31%	33%	28%	35%	24%	34%	25%	29%
10-MAKE RED TAPE	1797	497	444	580	276	829	418	131	419	628	647	522	961	331	21	194	177	606	177	1004	793
	11%	11%	10%	13%	10%	16%	10%	6%	10%	14%	11%	9%	11%	9%	4%	8%	9%	13%	13%	12%	10%
11-WANT TO HELP PEOPLE	4072	1054	1129	1148	741	978	1080	785	1229	879	1377	1796	2403	1025	103	719	705	1110	309	2103	1969
	25%	23%	26%	26%	27%	19%	25%	33%	29%	20%	24%	30%	28%	29%	22%	29%	36%	24%	23%	26%	25%
12-CORRUPT	2731	801	768	630	532	1126	653	312	640	996	912	823	1255	498	151	330	310	894	159	1452	1279
	17%	18%	18%	14%	19%	22%	15%	13%	15%	22%	16%	14%	14%	14%	32%	13%	16%	19%	12%	18%	16%
13-CARE ABOUT FREEDOM	2327	591	633	708	395	712	676	310	629	527	822	968	1435	515	33	327	344	672	189	1109	1218
	14%	13%	15%	16%	14%	14%	16%	13%	15%	12%	15%	16%	16%	14%	7%	13%	18%	15%	14%	14%	15%
14-ONLY WANT POWER	3562	1077	1053	797	635	1337	1002	463	760	1011	1437	1114	1758	735	154	510	385	1121	256	1749	1813
	22%	24%	24%	18%	23%	26%	23%	20%	18%	23%	25%	19%	20%	20%	33%	20%	20%	24%	19%	22%	23%
15-PUBLIC SPIRITED	3351	922	992	835	602	902	952	583	914	722	1216	1403	2003	951	88	652	563	832	403	1646	1705
	21%	21%	23%	19%	22%	17%	22%	25%	22%	16%	22%	24%	23%	27%	19%	26%	29%	18%	30%	20%	21%
16-DULL	525	188	175	53	109	203	123	50	149	217	198	110	227	112	48	132	34	146	37	326	199
	3%	4%	4%	1%	4%	4%	3%	2%	4%	5%	4%	2%	3%	3%	10%	5%	2%	3%	3%	4%	2%

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TABLE 110A
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	TOTAL	REGION EAST	REGION MID-WEST	REGION SO-UTH	REGION WEST	AREA CITIES	AREA SUBURBS	AREA TOWNS	AREA RURAL
17-EFFICIENT	1225	285	357	371	212	350	223	256	396
	8%	6%	8%	8%	8%	7%	5%	11%	9%
18-COULDN'T CARE LESS	1289	367	294	341	287	544	301	114	330
	8%	8%	7%	8%	10%	11%	7%	5%	8%
19-CREATIVE, IMAGINATIVE	288	85	60	112	31	55	62	65	106
	2%	2%	1%	3%	1%	1%	1%	3%	3%
20-DO THINGS BY THE BOOK	1118	329	402	216	171	344	321	169	284
	7%	7%	9%	5%	6%	7%	7%	7%	7%
21-TELLS IT LIKE IT IS	534	139	166	139	90	163	107	106	158
	3%	3%	4%	3%	3%	3%	2%	4%	4%
22-MAKE PROMISES THAT ARE NEVER KEPT	6748	1872	1772	1764	1340	2550	1750	800	1648
	42%	42%	41%	40%	48%	49%	41%	34%	39%
NONE (VOL.)	93	10	45	38	-	12	43	16	22
	1%	*	1%	1%	-	*	1%	1%	1%
NOT SURE	933	216	97	474	146	208	233	130	362
	6%	5%	2%	11%	5%	4%	5%	5%	9%

	AGE 18-29	AGE 30-49	AGE 50 & OVER	WHITE PROTESTANT	WHITE CATHOLIC	JEWISH	TYPE OF WORK PROF	TYPE OF WORK EXEC	TYPE OF WORK SKILLED LBR	TYPE OF WORK WHITE COL-LAR	SEX MEN	SEX WO-MEN
17-EFFICIENT	260	470	495	750	265	-	176	164	232	131	644	581
	6%	8%	8%	9%	7%	-	7%	8%	5%	10%	8%	7%
18-COULDN'T CARE LESS	418	422	449	603	227	38	105	141	472	76	728	561
	9%	7%	8%	7%	6%	8%	4%	7%	10%	6%	9%	7%
19-CREATIVE, IMAGINATIVE	43	96	149	166	57	21	41	14	127	23	134	154
	1%	2%	3%	2%	2%	4%	2%	1%	3%	2%	2%	2%
20-DO THINGS BY THE BOOK	407	424	287	597	196	40	229	99	284	52	678	440
	9%	7%	5%	7%	5%	8%	9%	5%	6%	4%	8%	5%
21-TELLS IT LIKE IT IS	175	164	195	277	162	-	30	41	152	31	314	220
	4%	3%	3%	3%	5%	-	1%	2%	3%	2%	4%	3%
22-MAKE PROMISES THAT ARE NEVER KEPT	2057	2535	2156	3541	1468	243	1067	779	2171	567	3393	3355
	46%	45%	36%	41%	41%	52%	42%	40%	47%	42%	42%	42%
NONE (VOL.)	10	40	43	55	12	10	12	-	39	-	49	44
	*	1%	1%	1%	*	2%	*	-	1%	-	1%	1%
NOT SURE	222	345	366	396	205	11	73	68	277	55	429	504
	5%	6%	6%	5%	6%	2%	3%	4%	6%	4%	5%	6%

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TABLE 125A

Q.24C - DO YOU FEEL WE NOW HAVE A FEDERAL GOVERNMENT IN WHICH.....(COL 534-541)

	TOTAL	REGION: EAST	REGION: MID-WEST	REGION: SOUTH	REGION: WEST	AREA: CITIES	AREA: SUBURBS	AREA: TOWNS	AREA: RURAL
1-MOST PUBLIC OFFICIALS ARE DEDICATED TO HELPING THE COUNTRY RATHER THAN BEING OUT FOR THEMSELVES	16086	4514	4337	4439	2796	5214	4292	2355	4225
	100%	100%	100%	100%	100%	100%	100%	100%	100%
NOW HAVE	5802	1408	1685	1686	1023	1695	1420	1027	1660
	36%	31%	39%	38%	37%	33%	33%	44%	39%
DON'T HAVE	8664	2675	2268	2210	1511	3095	2366	1037	2166
	54%	59%	52%	50%	54%	59%	55%	44%	51%
NOT SURE	1620	431	384	543	262	424	506	291	399
	10%	10%	9%	12%	9%	8%	12%	12%	9%
2-CORRUPTION & PAY-OFFS ALMOST NEVER TAKE PLACE	16070	4494	4337	4450	2789	5207	4282	2355	4226
	100%	100%	100%	100%	100%	100%	100%	100%	100%
NOW HAVE	2131	338	610	809	374	625	466	320	720
	13%	8%	14%	18%	13%	12%	11%	14%	17%
DON'T HAVE	12738	3930	3436	3099	2273	4281	3560	1807	3090
	79%	87%	79%	70%	81%	82%	83%	77%	73%
NOT SURE	1201	226	291	542	142	301	256	228	416
	7%	5%	7%	12%	5%	6%	6%	10%	10%

	AGE: 18-29	AGE: 30-49	AGE: 50 & OVER	WHITE: PROTESTANT	WHITE: CATHOLIC	WHITE: JEWISH	TYPE OF WORK: PROF	TYPE OF WORK: EXEC	TYPE OF WORK: SKILLED LBR	TYPE OF WORK: WHITE COLLAR	SEX: MEN	SEX: WOMEN
	4514	5628	5924	8683	3586	471	2525	1926	4589	1356	8082	8004
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
	1313	2038	2441	3418	1334	116	1063	841	1438	532	3050	2752
	29%	36%	41%	39%	37%	25%	42%	44%	31%	39%	38%	34%
	2723	3127	2814	4492	1860	294	1286	888	2711	696	4377	4287
	60%	56%	48%	52%	52%	62%	51%	46%	59%	51%	54%	54%
	478	463	669	773	392	61	176	197	440	128	655	965
	11%	8%	11%	9%	11%	13%	7%	10%	10%	9%	8%	12%
	4514	5628	5908	8684	3586	461	2518	1916	4589	1356	8086	7984
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
	504	644	973	1238	354	70	263	186	655	192	1064	1067
	11%	11%	16%	14%	10%	15%	10%	10%	14%	14%	13%	13%
	3717	4685	4326	6863	3009	384	2109	1619	3624	1111	6512	6226
	82%	83%	73%	79%	84%	83%	84%	84%	79%	82%	81%	78%
	293	299	609	583	223	7	146	111	310	53	510	691
	6%	5%	10%	7%	6%	2%	6%	6%	7%	4%	6%	9%

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TABLE 125A
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	REGION					AREA			
	TOTAL	EAST	MID-WEST	SOUTH	WEST	CITIES	SUBURBS	TOWNS	RURAL
3-THE BEST PEOPLE ARE ATTRACTED TO SERVE IN PUBLIC LIFE	16075	4504	4325	4450	2796	5214	4292	2355	4214
	100%	100%	100%	100%	100%	100%	100%	100%	100%
NOW HAVE	2768	570	808	981	409	980	499	579	710
	17%	13%	19%	22%	15%	19%	12%	25%	17%
DON'T HAVE	11150	3404	2989	2649	2108	3536	3252	1476	2886
	69%	76%	69%	60%	75%	68%	76%	63%	68%
NOT SURE	2157	530	528	820	279	698	541	300	618
	13%	12%	12%	18%	10%	13%	13%	13%	15%
4-GOVERNMENT IS THE MOST EXCITING PLACE TO WORK	16080	4504	4337	4450	2789	5207	4292	2355	4226
	100%	100%	100%	100%	100%	100%	100%	100%	100%
NOW HAVE	2919	737	797	1003	382	952	745	476	746
	18%	16%	18%	23%	14%	18%	17%	20%	18%
DON'T HAVE	9739	2806	2777	2299	1857	3155	2582	1468	2534
	61%	62%	64%	52%	67%	61%	60%	62%	60%
NOT SURE	3422	961	763	1148	550	1100	965	411	946
	21%	21%	18%	26%	20%	21%	22%	17%	22%

AGE			WHITE			TYPE OF WORK				SEX	
18-29	30-49	50 & OVER	PROTESTANT	CATHOLIC	JEWISH	PROF	EXEC	SKILLED LBR	WHITE COLLAR	MEN	WOMEN
4514	5616	5925	8672	3586	471	2525	1914	4589	1356	8093	7982
100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
670	832	1266	1612	548	39	314	366	972	152	1439	1329
15%	15%	21%	19%	15%	8%	12%	19%	21%	11%	18%	17%
3300	4129	3711	5836	2646	385	1891	1398	3015	1049	5764	5386
73%	74%	63%	67%	74%	82%	75%	73%	66%	77%	71%	67%
544	655	948	1224	392	47	320	150	602	155	890	1267
12%	12%	16%	14%	11%	10%	13%	8%	13%	11%	11%	16%
4514	5628	5918	8684	3586	471	2518	1926	4589	1356	8086	7994
100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
606	961	1342	1579	608	53	299	389	896	244	1462	1457
13%	17%	23%	18%	17%	11%	12%	20%	20%	18%	18%	18%
3143	3650	2936	5381	2172	325	1842	1238	2544	876	5142	4597
70%	65%	50%	62%	61%	69%	73%	64%	55%	65%	64%	58%
765	1017	1640	1724	806	93	377	299	1149	236	1482	1940
17%	18%	28%	20%	22%	20%	15%	16%	25%	17%	18%	24%

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TABLE 126A

Q.24C - DO YOU FEEL WE NOW HAVE A FEDERAL

	TOTAL	REGION: EAST	MID-WEST	SOUTH	WEST	AREA: CITIES	SUBURBS	TOWNS	RURAL
5-THE GOOD OF THE COUNTRY IS PLACED ABOVE SPECIAL INTERESTS	16036	4504	4329	4433	2770	5183	4285	2342	4226
	100%	100%	100%	100%	100%	100%	100%	100%	100%
NOW HAVE	3804	860	1043	1374	527	1187	767	655	1195
	24%	19%	24%	31%	19%	23%	18%	28%	28%
DON'T HAVE	10119	2984	2866	2249	2020	3324	2937	1368	2490
	63%	66%	66%	51%	73%	64%	69%	58%	59%
NOT SURE	2113	660	420	810	223	672	581	319	541
	13%	15%	10%	18%	8%	13%	14%	14%	13%
6-PUBLIC OFFICIALS REALLY CARE WHAT HAPPENS TO THE PEOPLE	16054	4497	4337	4431	2789	5207	4273	2355	4219
	100%	100%	100%	100%	100%	100%	100%	100%	100%
NOW HAVE	5433	1241	1610	1693	889	1555	1333	979	1566
	34%	28%	37%	38%	32%	30%	31%	42%	37%
DON'T HAVE	8464	2612	2232	2002	1618	2980	2321	1058	2105
	53%	58%	51%	45%	58%	57%	54%	45%	50%
NOT SURE	2157	644	495	736	282	672	619	318	548
	13%	14%	11%	17%	10%	13%	14%	14%	13%

GOVERNMENT IN WHICH.....(COL 534-541)

AGE: 18-29	30-49	50 & OVER	WHITE: PROTES TANT	CATHOLIC	JEWISH	TYPE OF WORK: PROF	EXEC	SKILLED LBR	WHITE COLLAR	SEX: MEN	WOMEN
4493	5628	5905	8646	3586	471	2512	1926	4571	1356	8065	7971
100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
972	1293	1539	2197	891	59	582	548	1019	282	1979	1825
22%	23%	26%	25%	25%	13%	23%	28%	22%	21%	25%	23%
2962	3659	3488	5421	2226	331	1721	1145	2948	903	5070	5049
66%	65%	59%	63%	62%	70%	69%	59%	64%	67%	63%	63%
559	676	878	1028	469	81	209	233	604	171	1016	1097
12%	12%	15%	12%	13%	17%	8%	12%	13%	13%	13%	14%
4514	5609	5911	8670	3586	471	2511	1919	4589	1356	8067	7987
100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
1464	1801	2148	3297	1195	108	895	745	1386	580	2852	2581
32%	32%	36%	38%	33%	23%	36%	39%	30%	43%	35%	32%
2493	3050	2921	4276	1895	253	1309	874	2619	606	4382	4082
55%	54%	49%	49%	53%	54%	52%	46%	57%	45%	54%	51%
557	758	842	1097	496	110	307	300	584	170	833	1324
12%	14%	14%	13%	14%	23%	12%	16%	13%	13%	10%	17%

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TABLE 126A
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	TOTAL	EAST	MID-WEST	SOUTH	WEST	CITIES	SUBURBS	TOWNS	RURAL	18-29	30-49	50 & OVER	PROTESTANT	CATHOLIC	JEWISH	PROF	EXEC	SKILLED LBR	WHITE COLLAR	MEN	WOMEN
7-LEADERS ARE GENUINELY WORKING FOR PEACE	16069	4504	4337	4432	2796	5214	4292	2355	4208	4514	5621	5914	8666	3586	471	2518	1926	4578	1356	8082	7987
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
NOW HAVE	9344	2488	2517	2675	1664	2750	2352	1631	2611	2529	3193	3602	5418	2306	237	1514	1324	2620	793	4730	4614
	58%	55%	58%	60%	60%	53%	55%	69%	62%	56%	57%	61%	63%	64%	50%	60%	69%	57%	58%	59%	58%
DON'T HAVE	4942	1607	1365	1100	870	1878	1445	497	1122	1561	1790	1591	2352	1007	172	747	413	1403	435	2586	2356
	31%	36%	31%	25%	31%	36%	34%	21%	27%	35%	32%	27%	27%	28%	37%	30%	21%	31%	32%	32%	29%
NOT SURE	1783	409	455	657	262	586	495	227	475	424	638	721	896	273	62	257	189	555	128	766	1017
	11%	9%	10%	15%	9%	11%	12%	10%	11%	9%	11%	12%	10%	8%	13%	10%	10%	12%	9%	9%	13%
8-LEADERS COME UP WITH SOLUTIONS TO INFLATION THAT WORK	16068	4504	4337	4431	2796	5202	4292	2355	4219	4514	5609	5925	8665	3586	471	2306	1926	4589	1356	8093	7975
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
NOW HAVE	1672	325	538	585	224	507	350	248	567	379	540	753	1016	336	18	211	138	550	157	858	814
	10%	7%	12%	13%	8%	10%	8%	11%	13%	8%	10%	13%	12%	9%	4%	8%	7%	12%	12%	11%	10%
DON'T HAVE	12660	3727	3372	3228	2333	4081	3577	1894	3108	3750	4521	4379	6812	2942	424	2150	1565	3583	1099	6421	6239
	79%	83%	78%	73%	83%	78%	83%	80%	74%	83%	81%	74%	79%	82%	90%	86%	81%	78%	81%	79%	78%
NOT SURE	1736	452	427	618	239	614	365	213	544	385	548	793	837	308	29	145	223	456	100	814	922
	11%	10%	10%	14%	9%	12%	9%	9%	13%	9%	10%	13%	10%	9%	6%	6%	12%	10%	7%	10%	12%

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TABLE 127A

Q.24D-1 - DO YOU THINK IT IS POSSIBLE TO HAVE A FEDERAL GOVERNMENT IN WHICH.....(COL 542-549)

	TOTAL	REGION: EAST	MID-WEST	SOUTH	WEST	AREA: CITIES	SUBURBS	TOWNS	RURAL
1-MOST PUBLIC OFFICIALS ARE DEDICATED TO HELPING THE COUNTRY RATHER THAN BEING OUT FOR THEMSELVES	15307	4373	3995	4259	2680	5024	4219	2123	3941
	100%	100%	100%	100%	100%	100%	100%	100%	100%
POSSIBLE	13189	3477	3584	3801	2327	4333	3590	1914	3352
	86%	80%	90%	89%	87%	86%	85%	90%	85%
NOT POSSIBLE	1128	493	256	180	199	303	348	110	367
	7%	11%	6%	4%	7%	6%	8%	5%	9%
NOT SURE	990	403	155	278	154	388	281	99	222
	6%	9%	4%	7%	6%	8%	7%	5%	6%
2-CORRUPTION & PAY-OFFS ALMOST NEVER TAKE PLACE	15550	4407	4128	4323	2692	5082	4212	2243	4013
	100%	100%	100%	100%	100%	100%	100%	100%	100%
POSSIBLE	10173	2447	2844	3092	1790	3066	2950	1458	2699
	65%	56%	69%	72%	66%	60%	70%	65%	67%
NOT POSSIBLE	3897	1415	1084	757	641	1402	920	635	940
	25%	32%	26%	18%	24%	28%	22%	28%	23%
NOT SURE	1480	545	200	474	261	614	342	150	374
	10%	12%	5%	11%	10%	12%	8%	7%	9%

	AGE: 18-29	30-49	50 & OVER	WHITE: PROTESTANT	CATHOLIC	JEWISH	TYPE OF WORK: PROF	EXEC	SKILLED LBR	WHITE COLLAR	SEX: MEN	WOMEN
	4288	5301	5698	8200	3422	450	2386	1790	4349	1289	7687	7620
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
	3691	4514	4964	7196	2938	371	2129	1602	3808	1148	6564	6625
	86%	85%	87%	88%	86%	82%	89%	89%	88%	89%	85%	87%
	350	403	375	602	238	66	147	106	304	92	718	410
	8%	8%	7%	7%	7%	15%	6%	6%	7%	7%	9%	5%
	247	384	359	402	246	13	110	82	237	49	405	585
	6%	7%	6%	5%	7%	3%	5%	5%	5%	4%	5%	8%
	4367	5388	5775	8346	3521	460	2447	1840	4406	1299	7822	7728
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
	2764	3475	3924	5718	2238	273	1560	1253	2891	782	5076	5097
	63%	64%	68%	69%	64%	59%	64%	68%	66%	60%	65%	66%
	1235	1379	1283	1948	975	130	713	461	1088	402	2101	1796
	28%	26%	22%	23%	28%	28%	29%	25%	25%	31%	27%	23%
	368	534	568	680	308	57	174	126	427	115	645	835
	8%	10%	10%	8%	9%	12%	7%	7%	10%	9%	8%	11%

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TABLE 127A
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	TOTAL	REGION: EAST	MID-WEST	SOUTH	WEST	AREA: CITIES	SUBURBS	TOWNS	RURAL
3-THE BEST PEOPLE ARE ATTRACTED TO SERVE IN PUBLIC LIFE	15425	4385	4078	4269	2693	5055	4212	2187	3971
	100%	100%	100%	100%	100%	100%	100%	100%	100%
POSSIBLE	12322	3297	3307	3454	2264	4160	3328	1766	3068
	80%	75%	81%	81%	84%	82%	79%	81%	77%
NOT POSSIBLE	1934	678	561	438	257	485	572	302	575
	13%	15%	14%	10%	10%	10%	14%	14%	14%
NOT SURE	1169	410	210	377	172	410	312	119	328
	8%	9%	5%	9%	6%	8%	7%	5%	8%
4-GOVERNMENT IS THE MOST EXCITING PLACE TO WORK	15447	4401	4077	4277	2692	5062	4200	2206	3979
	100%	100%	100%	100%	100%	100%	100%	100%	100%
POSSIBLE	10576	2812	2889	3080	1795	3617	3044	1387	2528
	68%	64%	71%	72%	67%	71%	72%	63%	64%
NOT POSSIBLE	2609	875	595	631	508	747	531	528	803
	17%	20%	15%	15%	19%	15%	13%	24%	20%
NOT SURE	2262	714	593	566	389	698	625	291	648
	15%	16%	15%	13%	14%	14%	15%	13%	16%

	AGE: 18-29	30-49	50 & OVER	WHITE: PROTESTANT	CATHOLIC	JEWISH	TYPE OF WORK: PROF	EXEC	SKILLED LBR	WHITE COLLAR	SEX: MEN	WOMEN
	4346	5352	5707	8247	3495	453	2428	1820	4356	1289	7746	7679
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
	3452	4198	4652	6709	2742	335	1951	1486	3583	1030	6077	6245
	79%	78%	82%	81%	78%	74%	80%	82%	82%	80%	78%	81%
	561	688	685	998	446	87	326	272	481	193	1129	805
	13%	13%	12%	12%	13%	19%	13%	15%	11%	15%	15%	10%
	333	466	370	540	307	31	151	62	292	66	540	629
	8%	9%	6%	7%	9%	7%	6%	3%	7%	5%	7%	8%
	4343	5370	5714	8247	3510	460	2441	1816	4398	1287	7752	7695
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
	2877	3705	3994	5498	2445	303	1615	1266	3118	878	5272	5304
	66%	69%	70%	67%	70%	66%	66%	70%	71%	68%	68%	69%
	905	906	798	1542	500	81	455	369	628	274	1430	1179
	21%	17%	14%	19%	14%	18%	19%	20%	14%	21%	18%	15%
	561	759	922	1207	565	76	371	181	650	135	1050	1212
	13%	14%	16%	15%	16%	17%	15%	10%	15%	10%	14%	16%

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TABLE 128A

Q.24D-2 - DO YOU THINK IT IS POSSIBLE TO HAVE A

	TOTAL	REGION: EAST	REGION: MID-WEST	REGION: SOUTH	REGION: WEST	AREA: CITIES	AREA: SUBURBS	AREA: TOWNS	AREA: RURAL
5-THE GOOD OF THE COUNTRY IS PLACED ABOVE SPECIAL INTERESTS	15305	4323	4049	4257	2676	5030	4204	2156	3915
	100%	100%	100%	100%	100%	100%	100%	100%	100%
POSSIBLE	12983	3404	3567	3667	2345	4216	3635	1906	3226
	85%	79%	88%	86%	88%	84%	86%	88%	82%
NOT POSSIBLE	1132	436	294	233	169	348	304	124	356
	7%	10%	7%	5%	6%	7%	7%	6%	9%
NOT SURE	1190	483	188	357	162	466	265	126	333
	8%	11%	5%	8%	6%	9%	6%	6%	9%
6-PUBLIC OFFICIALS REALLY CARE WHAT HAPPENS TO THE PEOPLE	15294	4334	4033	4246	2681	4992	4212	2143	3947
	100%	100%	100%	100%	100%	100%	100%	100%	100%
POSSIBLE	13438	3569	3700	3827	2342	4259	3787	1987	3405
	88%	82%	92%	90%	87%	85%	90%	93%	86%
NOT POSSIBLE	940	357	244	145	194	364	213	89	274
	6%	8%	6%	3%	7%	7%	5%	4%	7%
NOT SURE	916	408	89	274	145	369	212	67	268
	6%	9%	2%	6%	5%	7%	5%	3%	7%

FEDERAL GOVERNMENT IN WHICH.....(COL 542-549)

AGE: 18-29	AGE: 30-49	AGE: 50 & OVER	WHITE: PROTESTANT	WHITE: CATHOLIC	WHITE: JEWISH	TYPE OF WORK: PROF	TYPE OF WORK: EXEC	TYPE OF WORK: SKILLED LBR	TYPE OF WORK: WHITE COLLAR	SEX: MEN	SEX: WOMEN
4254	5316	5715	8207	3452	453	2403	1797	4333	1290	7710	7595
100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
3559	4553	4851	7057	2932	343	2126	1569	3782	1049	6494	6489
84%	86%	85%	86%	85%	76%	88%	87%	87%	81%	84%	85%
334	391	407	632	194	69	170	153	309	104	618	514
8%	7%	7%	8%	6%	15%	7%	9%	7%	8%	8%	7%
361	372	457	518	326	41	107	75	242	137	598	592
8%	7%	8%	6%	9%	9%	4%	4%	6%	11%	8%	8%
4310	5299	5665	8144	3487	443	2373	1813	4339	1279	7682	7612
100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
3780	4688	4950	7296	3080	344	2204	1615	3841	1165	6753	6685
88%	88%	87%	90%	88%	78%	93%	89%	89%	91%	88%	88%
320	269	351	458	197	22	97	109	322	52	512	428
7%	5%	6%	6%	6%	5%	4%	6%	7%	4%	7%	6%
210	342	364	390	210	77	72	89	176	62	417	499
5%	6%	6%	5%	6%	17%	3%	5%	4%	5%	5%	7%

TABLE 128A
CONTINUED -1

	REGION					AREA			
	TOTAL	EAST	MID-WEST	SO-UTH	WEST	CIT-IES	SUB-URBS	TO-WNS	RU-RAL
7-LEADERS ARE GENUINELY WORKING FOR PEACE	15015	4261	3947	4172	2635	4945	4183	2001	3886
	100%	100%	100%	100%	100%	100%	100%	100%	100%
POSSIBLE	13583	3689	3657	3802	2435	4397	3865	1886	3435
	90%	87%	93%	91%	92%	89%	92%	94%	88%
NOT POSSIBLE	617	200	201	115	101	235	122	59	201
	4%	5%	5%	3%	4%	5%	3%	3%	5%
NOT SURE	815	372	89	255	99	313	196	56	250
	5%	9%	2%	6%	4%	6%	5%	3%	6%
8-LEADERS COME UP WITH SOLUTIONS TO INFLATION THAT WORK	15449	4367	4088	4291	2703	5034	4212	2248	3955
	100%	100%	100%	100%	100%	100%	100%	100%	100%
POSSIBLE	12182	3305	3241	3475	2161	3950	3434	1823	2975
	79%	76%	79%	81%	80%	78%	82%	81%	75%
NOT POSSIBLE	1447	374	492	309	272	511	301	216	419
	9%	9%	12%	7%	10%	10%	7%	10%	11%
NOT SURE	1820	688	355	507	270	573	477	209	561
	12%	16%	9%	12%	10%	11%	11%	9%	14%

	AGE			WHITE			TYPE OF WORK				SEX	
	18-29	30-49	50 & OVER	PRO-TES TANT	CATH OLIC	JEW-ISH	PROF	EXEC	SKIL LED LBR	WHITE COL-LAR	MEN	WO-MEN
7-LEADERS ARE GENUINELY WORKING FOR PEACE	4203	5215	5577	7979	3387	443	2304	1765	4255	1258	7564	7451
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
POSSIBLE	3815	4697	5051	7302	3112	397	2096	1670	3932	1150	6753	6830
	91%	90%	91%	92%	92%	90%	91%	95%	92%	91%	89%	92%
NOT POSSIBLE	171	203	243	364	78	10	101	60	174	38	358	259
	4%	4%	4%	5%	2%	2%	4%	3%	4%	3%	5%	3%
NOT SURE	217	315	283	313	197	36	107	35	149	70	453	362
	5%	6%	5%	4%	6%	8%	5%	2%	4%	6%	6%	5%
8-LEADERS COME UP WITH SOLUTIONS TO INFLATION THAT WORK	4340	5316	5773	8279	3490	460	2419	1815	4368	1310	7798	7651
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
POSSIBLE	3523	4216	4443	6457	2838	366	1891	1539	3584	1020	6177	6005
	81%	79%	77%	78%	81%	80%	78%	85%	82%	78%	79%	78%
NOT POSSIBLE	443	393	611	932	225	39	226	176	297	146	772	675
	10%	7%	11%	11%	6%	8%	9%	10%	7%	11%	10%	9%
NOT SURE	374	707	719	890	427	55	302	100	487	144	849	971
	9%	13%	12%	11%	12%	12%	12%	6%	11%	11%	11%	13%

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TABLE 129A

Q.24E - IN ORDER TO MAKE GOVERNMENT WORK BETTER, SHOULD THE RIGHT MEN BE PUT IN FIND, OR SHOULD TIGHT CHECKS BE SET UP BY LEGISLATORS, COURTS

		REGION				AREA			
	TOTAL	EAST	MID-WEST	SOUTH	WEST	CITIES	SUBURBS	TOWNS	RURAL
TOTAL ANS	16024	4451	4335	4452	2786	5197	4263	2346	4218
	100%	100%	100%	100%	100%	100%	100%	100%	100%
PUT RIGHT PEOPLE IN CONTROL	6431	1621	1735	2077	998	1997	1648	1068	1718
	40%	36%	40%	47%	36%	38%	39%	45%	41%
SET UP TIGHT CHECKS	7628	2220	2230	1756	1422	2516	2107	1002	2003
	48%	50%	51%	39%	51%	49%	49%	43%	47%
NOT SURE	1965	610	370	619	366	684	508	276	497
	12%	14%	9%	14%	13%	13%	12%	12%	12%

CONTROL AND ALLOWED TO RUN THINGS WITH THE HELP OF THE BEST EXPERTS THEY CAN AND CITIZEN GROUPS TO WATCH GOVERNMENT CLOSELY?

AGE			WHITE			TYPE OF WORK				SEX	
18-29	30-49	50 & OVER	PROTESTANT	CATHOLIC	JEWISH	PROF	EXEC	SKILLED LBR	WHITE COLLAR	MEN	WOMEN
4481	5599	5924	8670	3557	451	2494	1930	4569	1356	8044	7980
100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
1536	2293	2602	3582	1477	119	1005	921	1742	558	3348	3083
34%	41%	44%	41%	42%	26%	40%	48%	38%	41%	42%	39%
2366	2662	2590	4239	1594	283	1282	830	2184	652	3809	3819
53%	47%	44%	49%	44%	63%	52%	43%	48%	48%	47%	47%
579	644	732	849	486	49	207	179	643	146	887	1078
13%	12%	12%	10%	14%	11%	8%	9%	14%	11%	11%	14%

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TABLE 130A

Q.24F - WHY DO YOU FEEL THAT WAY ABOUT MAKING
BASE....ANSWERS

	TOTAL	REGION: EAST	REGION: MID-WEST	REGION: SOUTH	REGION: WEST	AREA: CITIES	AREA: SUBURBS	AREA: TOWNS	AREA: RURAL
TOTAL ANS	15487	4292	4214	4287	2694	4952	4223	2198	4114
	100%	100%	100%	100%	100%	100%	100%	100%	100%
PUT RIGHT PEOPLE IN CONTROL									
IF WE ELECT GOOD/HONEST LEADERS, WE DON'T NEED FURTHER CHECKS-DON'T ELECT THEM IF QUESTIONABLE	4193	1034	1008	1481	670	1396	1031	611	1155
	27%	24%	24%	35%	25%	28%	24%	28%	28%
MOST POLITICIANS/ OFFICIALS ARE HONEST, WANT TO HELP COUNTRY/PEOPLE	340	148	99	42	51	81	45	81	133
	2%	3%	2%	1%	2%	2%	1%	4%	3%
OFFICIALS/ADVISORS/ EXPERTS MORE QUALIFIED/ KNOWLEDGEABLE THAN AVERAGE CITIZEN	513	103	160	106	144	147	96	158	112
	3%	2%	4%	2%	5%	3%	2%	7%	3%
OFFICIALS SHOULD HAVE EXPERT ADVISORS/ NEED HELP	275	49	61	78	87	57	58	45	115
	2%	1%	1%	2%	3%	1%	1%	2%	3%
MUST TRUST PEOPLE	1044	379	281	234	150	340	304	151	249
	7%	9%	7%	5%	6%	7%	7%	7%	6%
CHECKING ON OFFICIALS WOULD CREATE CONFUSION/ FIGHTING FOR POWER-TOO MANY PEOPLE SAYING WHAT TO DO	713	168	306	170	69	208	189	104	212
	5%	4%	7%	4%	3%	4%	4%	5%	5%
CHECKING ON OFFICIALS LEADS TO CORRUPTION /VIGILANTISM/SPYING AND WIRETAPPING	238	59	53	63	63	23	123	39	53
	2%	1%	1%	1%	2%	*	3%	2%	1%
CHECKING IS INEFFICIENT/ USELESS	499	166	145	123	65	164	167	84	84
	3%	4%	3%	3%	2%	3%	4%	4%	2%
SYSTEM WORKS FINE AS IT IS-CHECKS & BALANCES ALREADY BUILT IN	233	91	46	58	38	61	61	50	61
	2%	2%	1%	1%	1%	1%	1%	2%	1%

THE GOVERNMENT WORK BETTER? (COL 551,552)
IN Q.24E

	AGE: 18-29	AGE: 30-49	AGE: 50 & OVER	WHITE: PROTESTANT	WHITE: CATHOLIC	WHITE: JEWISH	TYPE OF WORK: PROF	TYPE OF WORK: EXEC	TYPE OF WORK: SKILLED LBR	TYPE OF WORK: WHITE COLLAR	SEX: MEN	SEX: WOMEN
	4318	5436	5713	8366	3449	441	2433	1902	4402	1306	7837	7650
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
	921	1400	1872	2260	956	82	568	527	1268	297	2137	2056
	21%	26%	33%	27%	28%	19%	23%	28%	29%	23%	27%	27%
	96	89	155	178	91	7	38	65	124	32	154	186
	2%	2%	3%	2%	3%	2%	2%	3%	3%	2%	2%	2%
	118	237	158	265	142	23	82	81	116	45	312	201
	3%	4%	3%	3%	4%	5%	3%	4%	3%	3%	4%	3%
	80	104	91	187	34	-	88	11	65	8	194	81
	2%	2%	2%	2%	1%	-	4%	1%	1%	1%	2%	1%
	262	296	486	529	248	21	163	195	251	87	500	544
	6%	5%	9%	6%	7%	5%	7%	10%	6%	7%	6%	7%
	222	242	249	455	164	-	162	109	109	122	423	290
	5%	4%	4%	5%	5%	-	7%	6%	2%	9%	5%	4%
	53	138	47	120	58	-	42	21	90	34	79	159
	1%	3%	1%	1%	2%	-	2%	1%	2%	3%	1%	2%
	137	249	113	227	164	11	156	56	81	58	355	144
	3%	5%	2%	3%	5%	2%	6%	3%	2%	4%	5%	2%
	19	126	88	147	19	-	26	57	44	-	76	157
	*	2%	2%	2%	1%	-	1%	3%	1%	-	1%	2%

2343- PUBLIC TRUST- LOUIS HARRIS & ASSOC., OCTOBER 3, 1973

TABLE 130A
CONTINUED -1

	TOTAL	REGION EAST	REGION MID-WEST	REGION SO-UTH	REGION WEST	AREA CITIES	AREA SUB-URBS	AREA TOWNS	AREA RURAL
ANY OTHER ANSWER	175 1%	8 *	107 3%	22 1%	38 1%	50 1%	67 2%	21 1%	37 1%
SET-UP TIGHT CHECKS									
NEED CONTROLS/CHECKS/ CHECKS & BALANCES	1964 13%	583 14%	513 12%	500 12%	368 14%	549 11%	601 14%	317 14%	497 12%
HARD TO SAY WHO 'BEST MAN' IS-DON'T KNOW WHAT CANDIDATE WILL DO ONCE IN OFFICE	726 5%	257 6%	132 3%	245 6%	92 3%	245 5%	187 4%	104 5%	190 5%
POWER TEMPTS/CORRUPTS EVEN HONEST MEN-HARD TO PASS UP	934 6%	350 8%	250 6%	193 5%	141 5%	274 6%	316 7%	71 3%	273 7%
PEOPLE ARE GREEDY/JUST OUT FOR POWER/GAIN-NEED TO INSURE AGAINST THIS INCENTIVE TO	1111 7%	383 9%	257 6%	274 6%	197 7%	542 11%	217 5%	110 5%	242 6%
NEED CHECKS AND BALANCES FOR LEADERS TO GOVERN PROPERLY/ GUARD AGAINST THEIR OWN MISTAKES/ HUMAN ERROR	953 6%	278 6%	258 6%	218 5%	199 7%	288 6%	298 7%	96 4%	271 7%
GUARD AGAINST MINORITY RULE/DICTATORSHIP/TOO MUCH GOVT POWER	1082 7%	243 6%	354 8%	256 6%	229 9%	292 6%	360 9%	178 8%	252 6%
GUARD AGAINST GOVT SECRECY-PEOPLE HAVE A RIGHT TO KNOW WHAT'S GOING ON	269 2%	37 1%	92 2%	81 2%	59 2%	103 2%	70 2%	52 2%	44 1%
INSURES THE PEOPLE'S VOICE/REPRESENTATION IN GOVT/GOVT'S RESPONSIVENESS TO PEOPLE'S NEEDS	1219 8%	290 7%	437 10%	198 5%	294 11%	370 7%	321 8%	217 10%	311 8%
CITIZEN'S GROUPS ARE AN INFORMED/EFFECTIVE BALANCE TO GOVT	326 2%	153 4%	82 2%	21 *	70 3%	137 3%	73 2%	75 3%	41 1%
CHECKS & BALANCES ARE REQUIRED BY CONSTITUTION	504 3%	85 2%	237 6%	75 2%	107 4%	110 2%	173 4%	69 3%	152 4%

AGE 18-29	AGE 30-49	AGE 50 & OVER	WHITE PROTESTANT	WHITE CATHOLIC	WHITE JEWISH	TYPE OF WORK PROF	TYPE OF WORK EXEC	TYPE OF WORK SKILLED LBR	TYPE OF WORK WHITE COLLAR	SEX MEN	SEX WOMEN
47 1%	30 1%	98 2%	108 1%	32 1%	23 5%	69 3%	47 2%	21 *	- -	81 1%	94 1%
486 11%	787 14%	691 12%	1096 13%	430 12%	90 20%	301 12%	277 15%	584 13%	172 13%	1193 15%	771 10%
278 6%	266 5%	182 3%	423 5%	143 4%	11 2%	122 5%	106 6%	189 4%	78 6%	305 4%	421 6%
311 7%	328 6%	285 5%	522 6%	207 6%	55 12%	166 7%	103 5%	245 6%	66 5%	478 6%	456 6%
413 10%	320 6%	378 7%	504 6%	259 8%	36 8%	132 5%	105 6%	397 9%	101 8%	574 7%	537 7%
335 8%	277 5%	341 6%	490 6%	207 6%	52 12%	156 6%	143 8%	211 5%	99 8%	504 6%	449 6%
310 7%	401 7%	371 6%	646 8%	209 6%	46 10%	225 9%	90 5%	322 7%	48 4%	544 7%	538 7%
98 2%	55 1%	116 2%	196 2%	41 1%	- -	10 *	10 1%	81 2%	17 1%	122 2%	147 2%
513 12%	415 8%	291 5%	644 8%	306 9%	47 11%	295 12%	118 6%	363 8%	66 5%	537 7%	682 9%
97 2%	102 2%	127 2%	112 1%	74 2%	10 2%	48 2%	51 3%	83 2%	28 2%	166 2%	160 2%
127 3%	182 3%	195 3%	387 5%	94 3%	10 2%	121 5%	73 4%	152 3%	33 3%	304 4%	200 3%

2343- PUBLIC TRUST- LOUIS HARRIS & ASSOC., OCTOBER 3, 1973

TABLE 130A
CONTINUED -2

	TOTAL	REGION: EAST	MID-WEST	SOUTH	WEST	AREA: CITIES	SUBURBS	TOWNS	RURAL
PRESENT SYSTEM HASN'T BEEN WORKING-THINGS THAT HAVE BEEN HAPPENING	471	78	182	117	94	163	175	37	96
	3%	2%	4%	3%	3%	3%	4%	2%	2%
BECAUSE OF WATERGATE -TO PREVENT FUTURE WATERGATES	833	278	226	192	137	269	291	86	187
	5%	6%	5%	4%	5%	5%	7%	4%	5%
ANY OTHER ANSWER	175	81	33	28	33	58	16	30	71
	1%	2%	1%	1%	1%	1%	*	1%	2%
DO NOT KNOW	1019	325	117	398	179	338	309	97	275
	7%	8%	3%	9%	7%	7%	7%	4%	7%

	AGE: 18-29	30-49	50 & OVER	WHITE: PROTESTANT	CATHOLIC	JEWISH	TYPE OF WORK: PROF	EXEC	SKILLED LBR	WHITE COLLAR	SEX: MEN	WOMEN
PRESENT SYSTEM HASN'T BEEN WORKING-THINGS THAT HAVE BEEN HAPPENING	72	182	217	243	92	32	130	31	83	65	208	263
	2%	3%	4%	3%	3%	7%	5%	2%	2%	5%	3%	3%
BECAUSE OF WATERGATE -TO PREVENT FUTURE WATERGATES	192	284	357	472	142	46	87	95	289	64	332	501
	4%	5%	6%	6%	4%	10%	4%	5%	7%	5%	4%	7%
ANY OTHER ANSWER	52	57	66	102	16	12	19	49	30	-	76	99
	1%	1%	1%	1%	*	3%	1%	3%	1%	-	1%	1%
DO NOT KNOW	338	370	301	464	257	-	41	81	367	98	413	606
	8%	7%	5%	6%	7%	-	2%	4%	8%	8%	5%	8%

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155. The following is a report of a Market Opinion Research poll:

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The Market Opinion Research poll prepared for the Republican National Committee and released in January, 1975, revealed the following trend in the responses to the following five questions:

A. **How much of the time do you think you can trust the government in Washington to do what is right – just about always, most of the time, or only some of the time?**

	1964	1966	1968	1970	1972	1974
Always	14.0%	17.0%	7.5%	6.4%	6.8%	2.4%
Most of the time	62.0	48.0	53.4	47.1	44.9	29.9
Only some of the time	22.0	31.0	37.0	44.2	44.7	64.4
Don't Know	2.0	4.0	2.1	2.3	3.0	3.3
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Number of cases	(4658)	(1291)	(1557)	(1514)	(1333)	(2000)

B. **Would you say the government is pretty much run by a few big interests looking out for themselves or that it is run for the benefit of all the people?**

For benefit of all	64.0%	53.0%	51.8%	40.6%	43.4%	21.3%
Few big interests	29.0	34.0	39.2	49.6	48.4	69.9
Other/Depends/Both Checked	4.0	6.0	4.6	5.0	2.5	—
Don't know	3.0	7.0	4.3	4.8	5.8	8.8
TOTAL	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

C. **Do you think that quite a few of the people running the government are a little crooked, not very many are, or do you think hardly any of them are crooked at all?**

Hardly any	18.2%	—	18.4%	15.9%	16.0%	9.8%
Not many	48.4	—	49.3	48.8	46.1	37.9
Quite a lot	28.0	—	24.8	31.0	34.3	49.3
Don't know/Not ascertained	5.4	—	7.5	4.3	3.7	3.0
TOTAL	100.0%	100.9%	100.0%	100.0%	100.0%	100.0%

Center for Political Studies: 1964-1972

Market Opinion Research: 1974

D. **People like me don't have any say about what the government does.**

	1964[a]	1968[a]	1972[a]	1974[b]
Agree	29%	41%	36%	50%
Disagree	69	58	64	49
Don't know/NA	2	1	1	2
	100%	100%	100%	100%

E. **I don't think public officials care much what people like me think.**

Agree	36%	43%	50%	56%
Disagree	61	55	49	39
Don't know/NA	3	2	2	5
	100%	100%	100%	100%

[a] Center for Political Studies, University of Michigan.

[b] Market Opinion Research.

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156. Gulf Oil Corporation made illegal corporate contributions to the Nixon, Jackson and Mills Presidential campaigns in 1972.

157. Time Oil Corporation made illegal corporate contributions to the Nixon and Jackson campaigns in 1972.

158. The American Milk Producers Incorporated and other dairy organizations attempted to gain access to and influence governmental decisions by making large legal and illegal campaign contributions. The Senate Select Investigation also produced evidence that the milk producers sought to influence the course of a Justice Department antitrust investigation against AMPI.

159. In 1972, one person offered $100,000 to the Finance Committee to Re-Elect the President on the condition that he would be awarded certain government contracts on which he had bid. The Finance Committee replied that it would not accept the contribution that was contingent upon government business.

160. In 1972, one person offered contributions to the Finance Committee to Re-Elect the President on the condition that he receive FHA financing.

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161. In 1972, the Finance Committee to Re-Elect the President received letters offering contributions in return for government assistance.

162. Maurice Stans, Chairman of the Committee to Re-Elect the President has stated that when in 1972 the Finance Committee to Re-Elect the President dealt with individuals who offered contributions and also intimated that they desired something in return, such individuals left without any further dealings.

163. In 1972, one person offered to make a $100,000 contribution to the Finance Committee to Re-Elect the President only because that person thought it would assist his attempts to have HUD lift a suspension it had imposed on him, and not because that person was interested in assisting the Nixon Re-Election Campaign.

164. Howard Hughes authorized large contributions to the Nixon campaign through an aide because Hughes thought it would insure access to President Nixon.

165. American Milk Producers, Inc. made campaign contributions during the 1972 Presidential campaign to the Nixon campaign (approximately $632,500), the Humphrey

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campaign (approximately $42,225) and the Mills campaign (approximately $55,600).

166. Morris K. Udall is a member of the United States House of Representatives and a declared candidate for the Democratic nomination for President of the United States. In 1974 he voluntarily limited contributions to his Presidential campaign to the maximum which would be allowable after January 1, 1975, the effective date of the Federal Election Campaign Act Amendments of 1974 ($1,000 per individual and $5,000 per organization). He has been able to raise sufficient funds to make preliminary soundings in many of the United States. In the early months of 1975, Representative Udall was able to open a campaign headquarters, assemble a paid political staff of a dozen people, finance all of his current travel and travel by staff (to over forty states as of April 21, 1975) and finance four major preliminary direct-mail fund raising efforts on behalf of his Presidential campaign.

167. Morris K. Udall states in his affidavit that no serious student of the political process has ever stated that an individual with $200,000 available for expenditures would be able to capture the Presidency.

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168. Charles Mathias, Jr. is a United States Senator from the state of Maryland. He has held elected public office for 16 years. He was elected as a delegate to the Maryland House of Delegates, representing Frederick County, in 1958. In 1960 he was elected to the United States House of Representatives, and was re-elected to that position in 1962, 1964 and 1966. In 1968, he was elected to the United States Senate, and he was re-elected in November of 1974. In addition to his personal campaigns for these offices, he is familiar with numerous campaigns for other offices in Maryland and other states and with several campaigns for the office of the President of the United States. He has attended a very large number of meetings involving political campaigns and fund raisings.

169. In the 1974 campaign, and in other campaigns in which Senator Mathias has been involved, the principal fund raising effort has been designed to appeal to citizens of relative wealth. The greatest effort has been put where the greatest return can be achieved, and in the campaigns in which Senator Mathias has been involved that effort has almost always centered on soliciting large contributions.

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170. Candidates in campaigns in which Senator Mathias has been involved usually know and remember the names of individuals who make large contributions. In the Senator's experience, federal office holders will agree to meet with an individual who has made a large contribution so the official can hear the contributor's concerns and make the contributor aware these concerns have been considered. Moreover, on the many matters which come before elected officials that Senator Mathias is aware of and which do not relate directly to a specific vote, the official will often

agree to meet with the large contributor, listen to his views, and to the extent feasible, respond either positively or negatively.

171. Some individuals who know or suspect such special treatment for big contributors have told Senator Mathias that they feel the average American has no significant role in the political process and that they therefore do not participate.

172. Senator Mathias' 1974 campaign undertook special fund raising appeals mailings, distributed special envelopes for contributions at social or community affairs, provided speakers to address community groups interested in the campaign, and organized special

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door-to-door efforts. These efforts were designed to make it easier for the citizen of limited or moderate means to participate in the campaign.

173. Beginning December 21, 1973, Senator Mathias imposed the following limitations on his 1974 Senate re-election campaign:

(a) He accepted no cash contributions;

(b) He permitted no cash expenditures by his campaign or by others on his behalf;

(c) He solicited and accepted only contributions of $100 or less; and

(d) He accepted contributions from groups or organizations only if such contributions represented donations of $100 or less from any single individual.

174. Before Senator Mathias announced these limitations, his campaign organization had raised $118,745 from approximately 546 contributors. (After paying 1968 campaign debts and pre-campaign obligations, this amount was reduced to approximately $50,000.) The $118,745 was raised from 302 contributions of $100 or less totalling $25,045, and 239 contributions of more

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than $100 totalling $93,700. The average contribution was $217.

175. After Senator Mathias imposed these limitations, his campaign organization raised approximately $187,000 from approximately 6,370 individuals. No individual gave more than $100. The average contribution was $29.35. In addition, other individuals "pooled" their small contributions of less than $100. These "pooled" contributions totaled $77,000 and involved at least 1,800 individuals.

176. The number and size of the contributions to Senator Mathias' 1974 campaign is substantially different than the number and size of contributions to his 1968 senatorial campaign. In 1968, his campaign organization raised a total of approximately $402,000 from approximately 1,860 contributors. Only 5 percent of this amount, $20,852, was raised from 821 contributions of less than $100. All contributions of less than $500 totalled only $140,000, or 35 percent of the total. These represented the contributions of 1697 individuals, or 91 percent of all contributors. The remaining 9 percent of the contributors (including 20 political committees) gave 65 percent of all contributions,

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totalling $268,000. In the 1974 campaign, at least 8500 individuals made contributions of $100 or less which totalled approximately $290,000. Contributions of $100 or less amounted to 76 percent of the total amount raised for his 1974 campaign and 100 percent of the $264,000 raised after he imposed the $100 limit on contributions from any individual.

177. In Senator Mathias' 1974 senatorial campaign in which he imposed a $100 limit on contributions on December 21, 1973, more individuals contributed to his campaign than had contributed to his 1968 campaign for the same office.

178. In his 1974 campaign, Senator Mathias received letters from contributors which said that they contributed because of the $100 limitation he imposed on his campaign.

179. It is difficult to state how well an experiment similar to that conducted by Senator Mathias would fare if it were conducted at another time, in another state, and by another candidate, for the following reasons:

(a) In 1974, the media stated frequently that

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Senator Mathias' re-election was a sure bet. This had the effect of discouraging citizens from becoming involved in his campaign because many felt he would win without their participation.

(b) Senator Mathias was a well-known incumbent who began with a very high rating in the public pools.

(c) Senator Mathias' campaign took a number of actions to make it easier for the average citizen to become involved in and contribute to the campaign.

180. Both in Senator Mathias' 1974 senatorial campaign and in Eugene McCarthy's 1968 campaign for the Democratic Presidential primary, many people participated in political campaigns for the first time by contributions either of time or money.

181. During his 1968 campaign for the Presidential nomination of the Democratic party, Eugene J. McCarthy received contributions of more than $100,000 apiece from individuals. Others contributed more than $50,000 apiece. Through the time of the 1968 New Hampshire Democratic Presidential primary, at least 24 persons contributed more than $1,000 to Senator McCarthy's campaign. The contributions ranged from

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$1,069 to $15,000. The total amount received from the 24 large contributors who can be identified was $95,869. The excess over $1,000 received from these 24 persons was $71,869. In addition, one couple loaned $10,000 to Senator McCarthy's campaign approximately 1 month before the New Hampshire primary.

182. In Ramsey Clark's 1974 campaign for the U.S. Senate in New York, Clark imposed a limit of $100 on contributions. From December 1973 through March 1974, Clark sent personal letters seeking contributions of $100 or less to 400 friends and acquaintances. Between $12,000 and $14,000 was raised in that fashion. In March 1974, the Clark campaign spent approximately $6,000 on a half-page advertisement in the New York Times stating that Clark would run for the Senate if he received enough

support from small contributors. The Clark campaign received $17,000 in response to this advertisement. The Clark campaign used this $17,000 to initiate a direct mail campaign. Beginning in 1974, Clark planned and participated in a series of events, including small receptions, where Clark would speak on the issues and solicit funds.

183. Direct mail solicitations were the major fund raising activities of the Clark campaign. The Clark

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campaign never lost money on a direct mail solicitation effort. Several mailings produced return rates of 5% to 7%, although the Clark campaign had been advised that it could expect only a 1-1/2% to 2% response rate at best.

184. The Clark campaign spent $180,000-$200,000 on television, including several 15-30 minute programs, three 5-minute commercials and several 60 second commercials. The television programs included direct requests for contributions, the response to which paid for these programs.

185. From March to November 1974, the Clark campaign raised over $864,000, $225,000 of which was raised during the primary campaign. One of Clark's opponents, Senator Javits, who won the election, reported contributions of over $1.2 million.

186. The average contribution to the Clark campaign from all sources was approximately $20.00. The average from direct mail solicitation was $12.00. The records of the Clark campaign indicate that fewer than 1,000 individuals contributed $100.

187. The Clark campaign began with no money, no lists of prior contributions to the candidate, and

without any advantages of incumbency. Scores of prsons told the Clark campaign that they had never contributed to a political campaign before.

188. The Clark campaign permitted persons to contribute up to $100 during the primary and contribute up to another $100 after the primary.

189. The Clark campaign started with a relatively well-known person identified with a number of causes.

190. The two principal handicaps caused by the $100 limitation on campaign contributions imposed by the Clark campaign were:

(a) The inability to obtain money when needed. Starting was very slow as the Clark campaign waited for early contributions. After the primary a month passed before the Clark campaign could estimate even very roughly how much money might be available.

(b) The cost of raising money greatly reduced the amount available for direct campaigning. The cost of raising large

contributions is much lower than direct mail costs and limited contributions efforts.

191. Ramsey Clark received 38.2% of the vote for Senator in the 1974 campaign.

192. Ramsey Clark believes that, despite the problems caused by the $100 limitation, he had an adequate opportunity to communicate and campaign and that he did run an effective statewide campaign in New York in 1974.

193. The $100 limitation was a very popular issue in and of itself.

194. Senator James L. Buckley is of the opinion that the Clark campaign was not effective in communicating its positions to the voters.

195. During the 1972 elections for state-wide offices and mayoralties in the State of Washington, which were conducted under a law requiring disclosure of campaign contributions, there was no reduction in the total amount of funds collected by major candidates for these offices and there was a greater percentage of smaller contributions than there had been prior to the disclosure statute. Further, there was no reduction in

the amount of funds available to the major candidates for the mayoralties. Fewer companies gave $1,000 to both sides in a race than they had prior to the disclosure statute.

196. Contributions (including loans) during 1974 to the campaigns of individuals generally known or believed to be or to have been candidates for President in 1976, as reported pursuant to the Federal Election Campaign Act, as amended, were as follows, considering only the first $1,000 of any individual's aggregate contribution to any candidate:

Candidates	1974 Contributions (excluding portions over $1,000
Bentson	$ 424,477
Carter	38,209
Jackson	626,528
McCarthy	15,608
Mondale	76,039
Percy	97,688
Sanford	59,291
Udall	20,976
Wallace	1,719,475

197. Most politicians agree that one-half of the campaign expenditures are wasted, but no one knows which half.

[000001]

II. Statistical Findings Agreed to by the Parties

A. CONWAY FINDINGS

1. During the period from April 7, 1972 through the present, Common Cause has conducted a program to monitor campaign finances in the federal elections, with particular emphasis on Congressional races. Common Cause obtained copies from the Clerk of the House and Secretary of the Senate of each report filed between April 7, 1972 and February 1, 1975 by Congressional candidates and by political committees supporting Congressional candidates. Data extracted from these reports have been computerized.

Common Cause conducted a project to monitor campaign finances in the 1972 and 1974 federal elections. The Common Cause Campaign Finance Monitoring Project has focused on Congressional races but its activities also include monitoring campaign finances in Presidential races.

In both 1972 and 1974, the disclosure reports obtained from the Clerk and Secretary covered close to 2000 candidates, the political committees supporting those candidates and some 600 interest group and political party committees.

During the period from April 7, 1972 to the

[000002]

present, the monitoring project has prepared and made public a series of reports on the 1972 and 1974 campaign finance activities of House and Senate candidates, on the effects of party and incumbency on political funding and on the distribution of contributions to federal candidates by organized "special" interest committees and political party committees.

Common Cause in 1973 released a thirteen-volume series setting forth Congressional campaign finance data for all major party candidates who ran in the 1972 general elections plus significantly financed minor party and independent candidates and for interest group committees and national political party committees which supported Congressional candidates. A similar series for 1974 Congressional cnadidates probably will not be ready until July 1975 or later. Certain reports on the 1974 election have been prepared and publicly released, and are reflected in these findings.

In both 1972 and 1974, Congressional candidates were given the opportunity to review and correct the campaign finance totals set forth for them by the Monitoring Project, including the total contributions and total expenditure figures.

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Common Cause has made public an enormous amount of campaign finance data during the past three years dealing with the thousands of candidates and hundreds of registered interested groups. It has rarely received any requests for correction of such campaign finance data following its publication.

John J. Conway has been Associate Director of the Common Cause Campaign Finance Monitoring Project since June 1973, and has been on the project staff since November 1972.

As a staff member and Associate Director of the project, he has been involved in the supervision of the many volunteers who work on the project, quality control of the analysis, and development and design of the computer program for analyzing the data extracted from the reports filed with the Clerk of the House and Secretary of the Senate under the Federal Election Campaign Act of 1971. He has also been involved in supervising the analysis of the reports, filed by the Committee to Re-elect the President concerning contributions and expenditures during the period of January 1, 1971 to April 6, 1972, and in supervising the

[000004]

analysis of reports filed with the General Accounting Office under the Federal Election Campaign Act of 1971 by 1972 Presidential candidates and by political committees supporting 1972 Presidential candidates.

2. The Conway affidavits filed by the defendants present statistical data from a study by the Common Cause Campaign Finance Monitoring Project of the 1972 Presidential,

House and Senate elections and the 1974 House and Senate elections. The statistical data were extracted from the reports filed pursuant to the Federal Election Campaign Act of 1971 for the period April 7, 1972 through February 1, 1975. The contributions and expenditures figures for the 1972 Presidential, House, and Senate elections cover the period from April 7, 1972, the effective date of the Federal Election Campaign Act of 1971, through December 31, 1972. The contributions and expenditures figures for the 1974 House and Senate elections cover the period from September 1, 1973, through December 31, 1974. The calculations and conclusions are based on the following assumptions and definitions:

(a) Expenditures are defined as total campaign disbursements less funds invested in Government bonds or certificates of deposit,

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and less funds which have been used to repay loans made to the candidate or his political committees. Specifically, where loans are received by the candidate or his political committees, the use of the proceeds of those loans is considered a campaign expenditure, but the repayment of that loan is not considered a separate and additional campaign expenditure.

(b) On the assumption that expenditure figures for primary elections cannot be segregated from expenditures for general elections with reasonable accuracy from the reports filed pursuant to the Federal Election Campaign Act of 1971, expenditure figures for such elections are not segregated.

(c) Transfers between committees exclusively supporting a candidate or between such committees and the candidate are not treated as either contributions or expenditures.

(d) Contributions are defined as total campaign receipts less refunds, rebates and loans which have been repaid.

[000006]

(e) In determining the amounts of individual contributions over and above $1000 per contribution in the 1974 House and Senate elections, the following was not included: (i) loans (*see* paragraph 115, *infra*), (ii) cash on hand as of September 1, 1973, since it is not possible to determine how much of these funds represent contributions over $1000, and (iii) contributions by candidates to their own campaigns since under the Federal Election Campaign Act of 1971 and the 1974 Amendments to the Federal Election Campaign Act, House candidates can contribute up to $25,000 and Senate candidates up to $35,000 for their own campaigns.

(f) In determining the amounts of individual contributions over and above $1000 per contribution in the 1972 Presidential election, candidate contributions to their own campaigns up to the $50,000 limit were not included, nor was cash on hand as of January 1, 1971.

(g) Contributions and expenditures for

[000007]

special elections were not included in the computations.

(h) Debts carried over from previous campaigns were not included in the contribution or expenditure computations.

3. The following list contains the total contributions and expenditures for all major party candidates and significant third party or independent candidates for November 1972 House races. The winning candidate is listed first. The contests printed in italics are those in which there was no incumbent. Incumbents are indicated by an asterisk. The source of vote percentage figures is the *Congressional Quarterly*. Primary vote percentages are those of a runoff where a runoff occurred. Double asterisks (**) indicate a runoff.

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.
	ALABAMA				
1	Jack Edwards* (R)	No Opp.	76.5%	$ 42,862	$ 27,612
	D.W. McCrory (D)	69.3%	17.8	525	1,063
2	William Dickinson* (R)	No Opp.	54.8	61,432	50,193
	Ben C. Reeves (D) **	52.8	41.5	122,603	122,067
3	Bill Nichols* (D)	No Opp.	75.6	44,377	34,984
	Robert Kerr (R)	No Opp.	20.6	7,019	6,718
4	Tom Bevill* (D)	91.3	69.6	49,265	38,918
	Ed Nelson (R)	49.7	30.0	12,550	12,550
5	Robert E. Jones* (D)	78.1	74.2	33,596	30,786
	Dieter J. Schrader (R)	No Opp.	24.4	11,175	11,175
6	John Buchanan* (R)	No Opp.	59.8	35,898	33,976
	Ben L. Erdreich (D)	81.3	35.6	18,947	18,947
7	Walter Flowers* (D)	64.8	84.8	18,277	16,303
	ALASKA				
1	Nick Begich* (D)	No Opp.	56.2	77,565	64,893
	Don Young (R)	84.5	43.8	47,781	46,300

	ARIZONA				
1	John J. Rhodes* (R)	88.1	57.3	73,267	48,315
	Gerald Pollock (D)	62.7	42.7	27,755	28,646
2	Morris K. Udall* (D)	No Opp.	63.5	38,174	38,174
	Gene Savoie (R)	No Opp.	36.5	32,791	31,694
3	Sam Steiger* (R)	No Opp.	63.0	55,446	37,691
	Ted Wyckoff (D)	No Opp.	37.0	24,629	24,648
4	*John Conlan (R)*	*41.5*	*53.0*	*150,341*	*154,662*
	Jack Brown (D)	*37.1*	*47.0*	*303,719*	*318,254*
	ARKANSAS				
1	Bill Alexander* (D)	No Opp.	No Opp.	1,040	-0-
2	Wilbur Mills* (D)	No Opp.	No Opp.	-0-	-0-
3	John P. Hammerschmidt* (R)	No Opp.	77.3	34,683	27,588
	Guy W. Hatfield (D) **	53.0	22.7	4,138	4,243
4	*Ray Thornton (D)*	*51.3*	*No Opp.*	*51,854*	*51,854*

Source: Common Cause
Campaign Monitoring Project

Cong. Dist		Primary Vote %	General Election Vote %	Contrib.	Expend.
	CALIFORNIA				
1	Don H. Clausen* (R)	No Opp.	62.3%	$ 70,526	$ 49,450
	William Nighswonger (D)	44.4%	34.2	6,632	6,601
2	Harold Johnson* (D)	No Opp.	68.4	60,906	37,981
	Francis X. Callahan (R)	53.1	28.7	28,966	28,985
3	John E. Moss* (D)	No Opp.	69.9	50,799	39,314
	John Rakus (R)	57.4	30.1	8,049	8,042
4	Robert Leggett* (D)	No Opp.	67.4	18,971	19,128
	Benjamin Chang (R)	53.8	32.6	24,957	24,957
5	Phillip Burton* (D)	66.7	81.8	53,606	46,899
	Edlo E. Powell (R)	No Opp.	18.2	19,076	18,715
6	William Mailliard* (R)	No Opp.	52.1	165,636	148,550
	Roger Boas (D)	77.7	47.9	265,272	266,760
7	Ronald Dellums* (D)	73.1	55.9	91,259	100,853
	Peter Hannaford (R)	39.3	38.1	104,530	100,286
	Frank Cortese (Am. Ind.)	No Opp.	6.0	48,980	48,980
8	Fortney Stark (D)	55.7	52.9	217,248	266,684
	Lew M. Warden (R)	64.5	47.1	39,748	44,499
9	Don Edwards* (D)	87.4	72.3	27,592	25,398
	Herb Smith (R)	No Opp.	25.1	5,386	4,792
10	Charles Gubser* (R)	No Opp.	64.6	63,136	48,529
	Frank Gillette (D)	51.4	35.4	26,848	26,433
11	Leo Ryan (D)	No Opp.	60.5	53,033	52,127
	Charles Chase (R)	53.6	36.9	52,622	52,441
12	Burt Talcott* (R)	No Opp.	54.0	71,760	61,828
	Julian Camacho (D)	58.1	43.1	57,870	57,865
13	Charles Teague* (R)	No Opp.	73.8	47,791	39,546
	Lester Cleveland (D)	No Opp.	26.1	8,998	10,143
14	Jerome Waldie* (D)	No Opp.	77.6	48,272	47,160
	Floyd Sims (R)	No Opp.	22.4	4,604	4,524
15	John McFall* (D)	No Opp.	No Opp.	35,776	22,647
16	B.F. Sisk* (D)	No Opp.	79.1	90,472	54,890
	Carol Harner (R)	No Opp.	20.9	17,728	19,219
17	Paul McCloskey* (R)	43.7	54.6	313,856	321,558
	James Stewart (D)	36.8	35.9	103,905	109,418
	James Knapp (I)	No Opp.	9.5	76,068	75,970
18	Robert Mathias* (R)	No Opp.	66.4	66,570	47,737
	Vincent Lavery (D)	No Opp.	33.6	9,624	10,072

19	Chet Holifield*(D)	51.9	67.2	50,311	26,110
	Kenneth Fisher (R)	66.6	27.9	5,754	5,202
20	*Carlos Moorhead (R)*	*51.2*	*57.4*	*104,140*	*97,617*
	John Binkley (D)	*No Opp.*	*42.6*	*52,793*	*56,380*
21	Augustus Hawkins*(D)	No Opp.	82.9	14,112	10,459
	Rayfield Lundy (R)	No Opp.	17.1	325	325
22	James Corman *(D)	85.5	67.6	58,895	58,544
	Bruce Wolfe (R)	65.8	29.3	17,992	19,169

[00009A]

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.
	CALIFORNIA CONT'd				
23	Del Clawson*(R)	No Opp.	61.4%	$ 73,016	$ 65,007
	Conrad Tuohey (D)	54.1%	38.6	39,039	45,844
24	John Rousselot*(R)	No Opp.	70.1	67,970	61,473
	Luther Mandell (D)	66.0	29.9	4,660	4,660
25	Charles Wiggins*(R)	No Opp.	64.9	53,107	34,643
	Leslie Craven (D)	64.5	31.9	5,926	5,925
26	Thomas Rees*(D)	86.1	68.6	70,820	45,963
	Philip Rutta (R)	78.1	27.9	229	193

27	Barry Goldwater,Jr.*(R)	No Opp.	57.4	134,263	134,263
	Mark Novak (D)	37.0	42.6	44,292	42,840
28	Alphonzo Bell*(R)	No Opp.	60.7	50,604	48,719
	Mike Shapiro (D)	68.7	37.5	56,437	60,424
29	George Danielson*(D)	No Opp.	62.7	50,186	30,832
	Richard Ferraro (R)	No Opp.	33.5	14,533	14,526
30	Edward Roybal*(D)	85.7	68.4	26,224	24,574
	Bill Brophy (R)	83.0	28.6	27,681	31,143
31	Charles Wilson*(D)	50.7	52.3	67,942	67,713
	Ben Valentine (R)	No Opp.	42.5	63,432	62,875
32	Craig Hosmer*(R)	No Opp.	65.9	47,529	23,572
	Dennis Murray (D)	55.0	31.9	25,252	23,072
33	Jerry Pettis*(R)	No Opp.	75.0	80,029	36,833
	Ken Thompson (D)	48.7	25.0	5,151	5,311
34	Richard Hanna*(D)	No Opp.	67.1	74,530	40,785
	John Ratterree (R)	55.4	29.0	13,850	13,181
35	Glenn Anderson*(D)	No Opp.	74.8	61,574	38,077
	Vernon Brown (R)	No Opp.	25.2	214	3,079
36	*William Ketchum (R)*	*80.9*	*52.7*	*111,303*	*106,576*
	Timothy Lemucchi (D)	*28.5*	*43.5*	*57,013*	*58,066*
	William Armour (AI)	*No Opp.*	*3.8*	*16,938*	*16,913*

37	Yvonne B. Burke (D)	53.6	73.2	131,756	138,024
	Gregg Tria (R)	59.7	24.6	24,112	24,112
38	George Brown, Jr. (D)	28.2	55.9	154,932	154,743
	Howard Snider (R)	45.4	43.4	109,509	108,537
39	Andrew Hinshaw (R)	45.6	65.7	162,293	161,814
	John Black (D)	47.0	34.3	10,549	10,515
40	Bob Wilson*(R)	No Opp.	67.8	49,638	32,066
	Frank Caprio (D)	No Opp.	30.3	6,718	7,349
41	Lionel Van Deerlin*(D)	No Opp.	74.0	69,936	44,931
	Richard Kau (R)	No Opp.	26.0	16,231	15,776
42	Clair Burgener (R)	78.7	67.5	107,395	91,664
	Robert Lowe (D)	52.6	29.1	4,952	4,917
43	Victor Veysey*(R)	No Opp.	62.7	73,823	60,432
	Ernest Robles (D)	78.8	37.3	21,920	21,920

[00010]

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.
	COLORADO				
1	Patricia Schroeder (D)	54.8%	51.6%	$ 86,002	$ 80,508
	James McKevitt*(R)	No Opp.	47.5	109,535	78,436
2	Donald Brotzman*(R)	No Opp.	66.3	81,784	60,004
	Francis Brush (D)	No Opp.	33.4	5,419	5,509
3	Frank Evans*(D)	No Opp.	66.3	58,426	45,734
	Charles Brady (R)	77.9	33.7	9,435	9,435
4	James Johnson (R)	60.3	51.0	59,855	51,747
	Alan Merson (D)	52.7	49.0	88,504	104,994
5	William Armstrong (R)	No Opp.	62.3	97,142	88,538
	Byron Johnson (D)	66.7	36.5	17,291	17,273
	CONNECTICUT				
1	William Cotter*(D)	No Opp.	56.9	96,208	96,208
	Richard Rittenband (R)	No Opp.	41.9	56,375	55,985
2	Robert Steele*(R)	No Opp.	65.9	141,485	141,485
	Roger Hilsman (D)	No Opp.	34.1	60,575	60,226
3	Robert Giaimo*(D)	No Opp.	53.3	79,997	79,608
	Henry Povinelli (R)	No Opp.	46.7	35,046	33,591
4	Stewart McKinney*(R)	No Opp.	63.1	96,629	112,669
	James McLoughlin (D)	No Opp.	36.9	41,009	39,809
5	Ronald Sarasin (R)	No Opp.	51.2	81,067	80,251
	John Monagan*(D)	No Opp.	48.8	86,661	84,436
6	Ella Grasso*(D)	No Opp.	60.2	85,968	85,968
	John Walsh (R)	No Opp.	39.8	60,217	59,956

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.
	DELAWARE				
1	Pierre DuPont*(R)	No Opp.	62.5	98,003	82,333
	Norma Handloff (D)	No Opp.	36.9	43,795	42,831
	FLORIDA				
1	Robert Sikes*(D)	80.8	No Opp.	55,143	36,651
2	Don Fuqua* (D)	72.5	No Opp.	49,159	24,186
3	Charles Bennett*(D)	No Opp.	82.0	22,301	22,301
	John Bowen (R)	No Opp.	18.0	2,375	2,439
4	Bill Chappell, Jr.*(D)	No Opp.	55.9	98,141	93,103
	Philip Fleuchaus (R)	No Opp.	44.1	39,841	38,840
5	*William Gunter, Jr. (D)*	*82.7*	*55.5*	*139,163*	*137,745*
	Jack Insco (R) **	*50.6*	*44.5*	*80,505*	*79,654*
6	C.W. Young*(R)	No Opp.	76.0	38,748	31,686
	Michael Plunkett (D)	No Opp.	24.0	3,177	2,925
7	Sam Gibbons*(D)	No Opp.	68.0	19,050	8,194
	Robert Carter (R)	No Opp.	32.0	14,218	14,218
8	James Haley*(D)	No Opp.	57.8	36,984	36,960
	Roy Thompson, Jr.(R)	No Opp.	42.2	37,678	38,587
9	Louis Frey, Jr.*(R)	No Opp.	No Opp.	56,428	22,255
10	*Leroy Bafalis (R)*	*71.6*	*62.0*	*129,393*	*129,393*
	Bill Sikes (D) **	*56.4*	*38.0*	*56,031*	*55,035*

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.
	FLORIDA CONT'D				
11	Paul Rogers*(D)	No Opp.	60.2%	$ 104,917	$ 87,253
	Joel Gustafson(R)	No Opp.	39.8	59,108	59,108
12	Herbert Burke*(R)	No Opp.	62.8	38,195	30,600
	James Stephanis (D)	No Opp.	37.2	56,434	56,434
13	*William Lehman (D)* **	*57.6*	*61.6*	*123,858*	*122,725*
	Paul Bethel (R)	*56.1*	*38.4*	*34,010*	*31,660*
14	Claude Pepper*(D)	64.3	67.6	95,863	95,864
	Evelio Estrella (R)	No Opp.	32.4	44,007	34,921
15	Dante Fascell*(D)	No Opp.	56.8	63,690	61,370
	Ellis Rubin (R)	51.6	43.2	9,511	9,522
	GEORGIA				
1	*Ronald Ginn (D)* **	*55.1*	*No Opp.*	*106,000*	*76,835*
2	Dawson Mathis*(D)	No Opp.	No Opp.	4,548	2,042
3	Jack Brinkley*(D)	No Opp.	No Opp.	2,125	1,030
4	Ben Blackburn*(R)	No Opp.	75.9	46,335	34,276
	Odell Welborn (D)	58.9	24.1	3,886	3,886

5	*Andrew Young (D)*	*60.7*	*82.8*	*170,051*	*169,421*
	Rodney Cook (R)	*No Opp.*	*47.2*	*160,391*	*149,617*
6	John Flynt*(D)	76.9	No Opp.	14,204	2,612
7	John Davis*(D)	52.1	58.3	32,249	18,500
	Charles Sherrill (R)	60.7	41.7	4,511	4,511
8	W.S. Stuckey*(D)	65.7	62.4	105,282	103,254
	Ronnie Thompson (R)	No Opp.	37.6	17,061	17,448
9	Phil Landrum*(D)	No Opp.	No Opp.	2,970	1,378
10	Robert Stephens*(D)	85.3	No Opp.	13,421	8,520
	HAWAII				
1	Spark Matsunaga*(D)	No Opp.	54.7	177,389	127,753
	Fred Rohlfing (R)	91.4	45.3	183,448	179,221
2	Patsy Mink* (D)	74.8	57.1	82,348	71,620
	Diana Hansen (R)	No Opp.	42.9	44,390	39,836
	IDAHO				
1	*Steven D. Symms (R)*	*45.7*	*55.6*	*92,099*	*89,306*
	Edward V. Williams (D)	*No Opp.*	*44.4*	*89,819*	*89,585*
2	Orval Hansen*(R)	No Opp.	69.2	26,516	11,457
	Willis H. Ludlow (D)	No Opp.	27.0	14,360	13,632

[00012]

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.
	ILLINOIS				
1	Ralph H. Metcalfe*(D)	No Opp.	91.4	21,036	9,861
	Louis Coggs (R)	No Opp.	8.6	-0-	1,235
2	Morgan F. Murphy*(D)	No Opp.	75.0	30,109	22,510
	James E. Doyle (R)	No Opp.	25.0	4,250	3,044
3	*Robert P. Hanrahan (R)*	*72.3*	*62.3*	*36,229*	*34,839*
	Daniel P. Coman (D)		*37.7*	*40,853*	*40,712*
	ILLINOIS CONT'D				
4	Edward J. Derwinski*(R)	No Opp.	70.5%	$ 22,862	$ 17,896
	C. F. Dore (D)	51.4%	29.5	12,155	11,342
5	John C. Kluczynski *(D)	86.5	72.8	20,566	12,936
	Leonard C. Jarzab (R)	No Opp.	27.2	-0-	1,694
6	Harold R. Collier*(R)	No Opp.	61.2	35,195	32,303
	Michael R. Galasso(D)	No Opp.	38.8	40,050	40,050
7	George W. Collins*(D)	83.8	82.8	5,535	1,585
	Thomas J. Lento (R)	No Opp.	17.2	792	792

8	Dan Rostenkowski*(D)	No Opp.	74.0	25,943	13,737
	Edward L. Stepnowski (R)	No Opp.	26.0	225	225
9	Sidney R. Yates*(D)	No Opp.	68.3	56,767	29,723
	Clark W. Fetridge (R)	No Opp.	31.7	16,679	16,353
10	Samuel H. Young (R)	59.7	51.6	195,219	206,166
	Abner J. Mikva*(D)	65.6	48.4	220,944	218,543
11	Frank Annunzio*(D)	No Opp.	53.3	122,484	117,415
	John J. Hoellen (R)	69.7	46.7	91,467	108,126
12	Philip M. Crane*(R)	No Opp.	74.2	61,574	52,661
	Edwin L. Frank (D)	No Opp.	25.8	4,225	4,154
13	Robert McClory*(R)	No Opp.	61.5	24,603	25,010
	Stanley W. Beetham (D)	No Opp.	38.5	18,607	20,120
14	John V. Erlenborn*(R)	No Opp.	72.8	28,004	24,871
	James M. Wall (D)	No Opp.	27.2	7,392	7,183
15	Leslie C. Arends*(R)	57.2	57.2	43,007	33,450
	Tim L. Hall (D)	52.8	42.8	5,119	7,753
16	John B. Anderson*(R)	No Opp.	71.9	48,050	33,544
	John E. Devine, Jr. (D)	69.0	28.1	1,522	1,463
17	*George M. O'Brien (R)*	*No Opp.*	*55.6*	*59,980*	*55,360*
	John J. Houlihan (D)	*No Opp.*	*44.4*	*32,748*	*32,748*
18	Robert H. Michel*(R)	No Opp.	64.8	22,976	20,850
	Steven L. Nordvall (D)	65.3	35.2	2,667	2,901

19	Tom Railsback*(R)	No Opp.	No Opp.	27,185	25,610
20	Paul Findley *(R)	No Opp.	68.8	84,683	71,187
	Robert S. O'Shea (D)	No Opp.	31.2	15,671	15,671
21	*Edward R. Madigan (R)*	*68.7*	*54.8*	*86,573*	*85,958*
	Lawrence E. Johnson (D)	*No Opp.*	*45.2*	*30,577*	*29,802*
22	George E. Shipley*(D)	No Opp.	56.5	55,343	52,812
	Robert L. Lamkin (R)	No Opp.	41.0	60,046	83,554
23	Melvin Price*(D)	No Opp.	75.1	24,435	17,134
	Robert Mays (R)	39.7	24.9	1,691	2,734
24	Kenneth J. Gray*(D)	No Opp.	93.7	27,941	11,624

INDIANA

1	Ray J. Madden*(D)	46.5	56.9	66,678	72,655
	Bruce Haller (R)	71.0	43.1	8,690	9,551

[00013]

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.
	INDIANA CONT'D				
2	Earl F. Landgrebe*(R)	54.5%	54.7%	$ 70,700	$ 55,474
	Floyd J. Fithian (D)	No Opp.	45.3	43,015	44,359

3	John Brademas*(D)	No Opp.	55.2	140,906	133,634
	Don M. Newman (R)	74.9	43.2	45,160	45,160
4	Edward Roush*(D)	No Opp.	51.5	63,875	63,613
	Allan Bloom (R)	48.0	48.5	123,796	165,984
5	Elwood Hillis*(R)	85.9	64.1	71,309	64,781
	Kathleen Williams (D)	37.5	35.9	6,644	9,026
6	William G. Bray*(R)	No Opp.	64.8	36,341	32,297
	David W. Evans (D)	No Opp.	35.2	8,296	8,253
7	John T. Myers* (R)	No Opp.	61.6	58,855	58,186
	Warren R. Henegar (D)	66.5	38.4	30,950	40,000
8	Roger H. Zion*(R)	No Opp.	63.4	48,192	24,731
	Richard L. Deen (D)	62.9	36.6	1,634	1,634
9	Lee H. Hamilton*(D)	No Opp.	62.9	63,625	61,021
	William A. Johnson (R)	37.9	37.1	6,555	6,389
10	David W. Dennis*(R)	No Opp.	57.2	52,731	51,906
	Phillip R. Sharp (D)	67.0	42.8	69,879	69,879
11	William H. Hudnut III (R)	45.5	51.2	163,442	165,016
	Andrew R. Jacobs * (D)	84.7	48.8	71,166	64,422
	IOWA				
1	Edward Mezvinsky (D)	63.7	53.4	116,349	113,546
	Fred Schwengel*(R)	No Opp.	45.7	69,514	69,615

2	John C. Culver*(D)	No Opp.	59.2	59,910	40,794
	Theodore R. Ellsworth (R)	No Opp.	40.8	63,480	67,946
3	H. R. Gross*(R)	No Opp.	55.7	43,983	41,053
	Lyle Taylor (D)	62.4	44.3	26,795	26,795
4	Neal Smith*(D)	No Opp.	59.6	57,382	56,370
	John H. Kyl*(R)	No Opp.	40.4	108,153	112,154
5	William J. Scherle*(R)	No Opp.	55.3	47,296	35,105
	Thomas Harkin (D)	No Opp.	44.7	25,871	24,437
6	Wiley Mayne*(R)	No Opp.	52.5	54,232	50,166
	Berkley Bedell (D)	No Opp.	47.5	87,712	87,694
	KANSAS				
1	Keith G. Sebelius*(R)	No Opp.	77.2	53,186	20,545
	Morris Coover (D)	No Opp.	21.6	-0-	-0-
2	William R. Roy*(D)	No Opp.	60.6	145,381	148,995
	Charles D. McAtee (R)	63.4	37.1	116,087	115,985
3	Larry N. Winn*(R)	No Opp.	71.0	46,191	37,310
	Charles Barsotti (D)	No Opp.	25.4	5,991	5,991
4	Garner E. Shriver*(R)	No Opp.	73.2	47,682	34,954
	John S. Stevens (D)	50.7	24.8	7,300	6,557
5	Joe Skubitz*(R)	No Opp.	72.3	28,251	21,765
	Lloyd Kitch (D)	No Opp.	27.7	3,785	3,676

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.
	KENTUCKY				
1	Frank A. Stubbelfield*(D)	73.1%	64.8%	$ 30,055	$ 30,940
	Charles T. Banken, Jr. (R)	No Opp.	33.7	1,655	2,558
2	William H. Natcher*(D)	No Opp.	61.5	9,396	9,396
	J. G. Carter (R)	No Opp.	38.5	1,699	7,327
3	Romano L. Mazzoli*(D)	93.9	62.1	63,140	58,410
	Phil Kaelin, Jr. (R)	70.7	37.0	19,648	21,161
4	M. G. Snyder*(R)	No Opp.	73.8	77,274	29,411
	James W. Rogers (D)	46.0	26.2	445	375
5	Tim Lee Carter*(R)	No Opp.	73.5	15,806	12,155
	Lyle L. Willis (D)	50.1	26.5	21	216
6	*John B. Breckinridge (D)*	*57.8*	*52.4*	*65,056*	*69,216*
	Laban P. Jackson (R)	*44.1*	*46.8*	*82,177*	*82,152*
7	Carl D. Perkins*(D)	93.4	61.9	6,455	5,746
	Robert Holcomb (R)	72.9	38.1	48,035	48,035
	LOUISIANA				
1	Edward Hebert* (D)	No Opp.	No Opp.	500	500
2	Hale Boggs*(D)	83.7	No Opp.	116,434	90,380
3	*David C. Treen (R)*	*No Opp.*	*54.0*	*139,578*	*155,629*
	J. Louis Watkins (D) **	*54.2*	*46.0*	*228,495*	*229,767*
4	Joe D. Waggonner, Jr.*(D)	No Opp.	No Opp.	8,304	1,596
5	Otto E. Passman* (D)	61.0	No Opp.	38,295	37,545
6	John R. Rarick*(D)	60.8	No Opp.	53,312	42,459
7	John B. Breaux* (D) **	55.0	No Opp.	141,924	137,420
6	*Gillis W. Long (D)*	*52.9*	*68.5*	*107,919*	*107,919*
	Roy C. Strickland (R)	*No Opp.*	*14.7*	*5,705*	*5,612*
	S.R. Abramson (A)	*No Opp.*	*16.8*	*21,165*	*20,835*
	MAINE				
1	Peter Kyros*(D)	66.5%	59.4%	58,245	56,093
	Robert Porteous (R)	72.4	40.6	64,303	64,104
2	*William Cohen (R)*	*60.2*	*54.4*	*126,369*	*165,397*
	Elmer Violette (D)	*78.4*	*45.6*	*81,415*	*94,696*
	MARYLAND				
1	William Mills*(R)	80.2	70.5	94,806	93,945
	John Hargreaves (D)	53.1	29.5	40,580	40,419
2	Clarence Long*(D)	76.1	65.8	71,593	66,425
	John Bishop (R)	66.0	34.2	75,928	75,606

3	Paul Sarbanes*(D)	53.3	69.7	61,203	61,272
	Robert Morrow (R)	34.1	30.3	2,505	4,498
4	*Marjorie Holt (R)*	*71.1*	*59.4*	*111,488*	*113,513*
	Werner Fornos (D)	*22.5*	*40.6*	*133,918*	*145,973*
5	Lawrence Hogan*(R)	93.5	62.9	108,488	108,282
	Edward Conroy (D)	51.4	37.1	76,584	92,301

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.
	MARYLAND CONT'D				
6	Goodloe Byron*(D)	59.9%	64.8%	$ 77,220	$ 77,186
	Edward Mason(R)	54.5	35.2	59,065	60,333
7	Parren Mitchell*(D)	50.5	80.0	44,898	55,577
	Verdell Adair (R)	44.4	20.0	471	592
8	Gilbert Gude* (R)	No Opp.	63.9	74,924	70,899
	Joseph Anastasi (D)	78.3	36.1	61,904	61,904
	MASSACHUSETTS				
1	Silvio D. Conte* (R)	No Opp.	No Opp.	10,971	2,346
2	Edward P. Boland*(D)	No Opp.	No Opp.	-0-	-0-
3	Harold D. Donohue*(D)	No Opp.	No Opp.	11,415	125
4	Robert F. Drinan*(D)	No Opp.	48.8	191,801	199,703
	Martin A. Linsky (R)	33.5	45.8	139,576	148,285
	John Collins (In-Con)	No Opp.	5.4	23,526	22,579
5	*Paul W. Cronin (R)*	*58.5*	*53.5*	*145,532*	*171,414*
	John F. Kerry (D)	*27.5*	*44.7*	*267,815*	*279,746*
	Roger Durkin (I)	*No Opp.*	*1.8*	*45,572*	*62,952*
6	Michael Harrington*(D)	74.3	64.1	115,546	114,317
	James Brady Mosely (R)	No Opp.	35.9	90,957	93,400
7	Torbert H. Macdonald* (D)	82.3	67.7	28,810	15,918
	Joan Aliberti (R)	37.3	32.3	25,274	25,213
8	Thomas P. O'Neil, Jr.*(D)	No Opp.	88.7	42,107	35,901
	John Powers (SW)	No Opp.	11.3	229	229
9	John Moakley (I)	No Opp.	43.2	144,867	157,560
	Louise Day Hicks*(D)	37.7	41.1	32,356	29,686
	Howard Miller (R)	51.4	14.2	58,240	58,240
10	Margaret M. Heckler*(R)	No Opp.	No Opp.	14,704	10,518
11	James A. Burke*(D)	No Opp.	No Opp.	15,957	15,971
12	*Gerry E. Studds (D)*	*No Opp.*	*50.3*	*200,728*	*195,758*
	William D. Weeks (R)	*No Opp.*	*49.7*	*269,858*	*269,046*

	MICHIGAN				
1	John Conyers*(D)	No Opp.	88.4	39,663	29,661
	Walter Girardot (R)	64.7	10.8	1,513	978
2	Marvin Esch*(R)	No Opp.	56.0	73,416	71,649
	Marvin Stempien (D)	32.1	43.3	53,141	55,292
3	Garry Brown*(R)	No Opp.	59.2	32,012	23,116
	James Brignall (D)	63.1	39.9	25,375	26,320
4	Edward Hutchinson*(R)	61.5	67.3	40,401	40,110
	Charles W. Jameson (D)	58.9	32.7	10,894	12,300
5	Gerald Ford*(R)	No Opp.	61.1	98,576	87,345
	Jean McKee (D)	43.1	37.7	10,223	8,796
6	Charles Chamberlain*(R)	59.2	50.6	53,757	52,136
	Robert Carr (D)	No Opp.	49.4	53,469	52,462

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.
	MICHIGAN CONT'D				
7	Donald Riegle, Jr*(R)	No Opp.	70.1%	$ 29,734	$ 23,892
	Eugene Mattison (D)	50.2%	29.9	1,200	1,200
8	James Harvey*(R)	No Opp.	59.3	53,534	50,546
	Jerome Hart (D)	74.0	39.4	27,517	27,517
9	Guy Vander Jagt* (R)	No Opp.	69.4	50,983	23,887
	Larry Olson (D)	No Opp.	29.5	4,635	4,636
10	Elford Cederberg*(R)	81.7	66.7	19,410	17,684
	Bennie Graves (D)	No Opp.	30.9	5,197	4,666
11	Philip Ruppe*(R)	No Opp.	69.4	30,854	27,045
	James McNamara (D)	63.1	29.8	308	526
12	James O'Hara*(D)	No Opp.	50.8	66,463	62,472
	David Serotkin (R)	55.8	49.2	44,075	43,619
13	Charles Diggs*(D)	No Opp.	85.6	3,791	2,566
	Leonard T. Edwards(R)	No Opp.	13.3	10	10
14	Lucien Nedzi*(D)	43.0	54.9	36,189	32,765
	Robert McGrath (R)	71.3	45.1	16,568	16,568
15	William Ford*(D)	61.9	65.8	57,399	42,352
	Ernest Fackler (R)	No Opp.	32.3	40	43
16	John Dingell*(D)	85.8	68.1	33,611	26,593
	William Rostron (R)	No Opp.	29.7	239	239
17	Martha Griffiths*(D)	No Opp.	66.4	31,027	22,506
	Ralph Judd	55.0	32.5	645	527

18	*Robert Huber (R)*		*63.3*	*52.6*	*66,240*	*66,061*
	Daniel Cooper (D)		*37.0*	*47.4*	*84,588*	*83,280*
19	William Broomfield*(R)		57.6	70.4	66,986	41,708
	George Montgomery (D)		No Opp.	28.6	9,769	9,566
	MINNESOTA					
1	Albert Quie*(R)		No Opp.	70.7	37,552	32,586
	Charles Thompson (D)		60.6	29.3	379	438
2	Ancher Nelsen*(R)		No Opp.	57.1	72,206	68,855
	Charles Turnbull (D)		No Opp.	42.9	26,612	28,883
3	Bill Frenzel*(R)		93.1	62.9	119,544	97,933
	Jim Bell (D)		No Opp.	31.3	37,338	38,775
4	Joseph Karth*(D)		No Opp.	72.4	59,862	50,094
	Steve Thompson (R)		No Opp.	27.6	3,926	3,926
5	Donald Fraser* (D)		No Opp.	65.8	97,654	93,628
	Allan Davisson (R)		72.8	24.4	9,399	9,399
6	John Zwach*(R)		No Opp.	51.0	110,133	87,233
	Richard Nolan (D)		No Opp.	49.0	95,943	97,481
7	Bob Bergland*(D)		No Opp.	59.0	135,451	92,871
	Jon Haaven (R)		No Opp.	41.0	92,625	90,524
8	John Blatnik*(D)		76.1	75.9	54,566	54,612
	Edward Johnson (R)		No Opp.	24.1	745	395

Cong. Dist.	Source: Common Cause Campaign Monitoring Project		Primary Vote %	General Election Vote %	Contrib.	Expend.
	MISSISSIPPI					
1	Jamie L. Whitten*(D)		86.7%	No Opp.	$ 4,100	$ 4,100
2	*David R. Bowen (D)*	**	*57.0*	*61.9%*	*149,100*	*142,522*
	Carl Butler (R)		*No Opp.*	*34.7*	*80,759*	*80,449*
3	G.V. Montgomery*(D)		No Opp.	No Opp.	1,550	381
4	*Thad Cochran (R)*		*No Opp.*	*47.8*	*102,880*	*100,634*
	Ellis B. Bodron (D)	**	*50.8*	*44.0*	*100,108*	*100,128*
5	*Trent Lott (R)*		*70.7*	*55.3*	*119,837*	*119,190*
	Ben Stone (D)	**	*52.4*	*44.2*	*158,844*	*163,976*
	MISSOURI					
1	William Clay*(D)		75.8	64.0	31,619	17,480
	Richard Funsch (R)		No Opp.	36.0	59,335	59,672
2	James Symington*(D)		No Opp.	63.5	92,056	67,938
	John Cooper, Jr. (R)		55.3	36.5	35,533	30,298
3	Leonor Sullivan*(D)		93.9	69.3	34,404	29,225
	Albert Holst, Sr. (R)		66.3	30.4	5,151	5,151

4	William Randall* (D)	No Opp.	57.4	33,324	24,531
	Raymond Barrows (R)	No Opp.	42.6	6,310	5,922
5	Richard Bolling* (D)	No Opp.	62.8	25,559	25,054
	Vernon Rice (R)	No Opp.	35.6	575	442
6	*Jerry Litton (D)*	*35.7*	*54.6*	*171,635*	*188,642*
	Russell Sloan (R)	*59.8*	*45.4*	*102,269*	*100,059*
7	*Gene Taylor (R)*	*49.0*	*63.7*	*121,572*	*97,127*
	William Thomas (D)	*78.1*	*36.3*	*10,995*	*10,864*
8	Richard Ichord* (D)	No Opp.	62.1	54,508	33,779
	David Countie (R)	No Opp.	37.9	10,194	9,309
9	William Hungate* (D)	No Opp.	66.5	38,197	26,147
	Robert Prange (R)	60.3	33.5	7,719	7,719
10	Bill Burlison* (D)	76.0	64.3	35,841	14,730
	Marion Svendrowski (R)	No Opp.	35.7	293	3,065
	MONTANA				
1	Richard Shoop* (R)	90.0	53.7	72,742	65,224
	Arnold Olsen (D)	44.8	46.3	50,414	54,940
2	John Melcher* (D)	No Opp.	76.1	51,025	49,092
	Richard Forester (R)	No Opp.	23.9	10,475	10,475

	NEBRASKA				
1	Charles Thone* (R)	84.0	64.2	90,130	90,130
	Darrel E. Berg (D)	No Opp.	35.8	28,655	21,704
2	John Y. McCollister* (R) **	No Opp.	63.9	81,645	74,569
	Patrick L. Cooney (D)	No Opp.	36.1	21,456	22,050
3	Dave Martin* (R)	No Opp.	69.6	43,435	11,687
	Warren D. Fitzgerald (D)	54.2	30.4	9,425	9,425

[00018]

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.
	NEVADA				
1	*David Towell (R)*	*41.6%*	*52.2%*	*$ 81,779*	*$ 83,106*
	James Bilbray (D)	*52.0*	*47.8*	*174,086*	*179,406*
	NEW HAMPSHIRE				
1	Louis Wyman* (R)	No Opp.	72.9	33,210	32,945
	Chester Merrow (D)	59.2	27.1	2,786	3,122
	James Cleveland* (R)	No Opp.	67.9	24,678	23,479
	Charles Officer (D)	No Opp.	32.1	35,065	37,030

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.
	NEW JERSEY				
1	John Hunt*(R)	No Opp.	52.5	22,921	23,837
	James Florio (D)	79.6	47.1	36,373	36,107
2	Charles Sandman*(R)	No Opp.	65.7	11,780	11,780
	John Rose (D)	No Opp.	34.3	5,958	5,341
3	James Howard*(D)	No Opp.	53.0	70,721	62,773
	William Dowd (R)	No Opp.	47.0	50,718	50,718
4	Frank Thompson*(D)	No Opp.	58.0	51,454	48,221
	Peter Garibaldi (R)	No Opp.	42.0	8,083	7,983
5	Peter Frelinghuysen* (R)	No Opp.	62.0	20,765	20,765
	Frederick Bohen (D)	63.5	38.0	55,641	54,888
6	Edwin Forsythe*(R)	No Opp.	62.8	40,228	38,604
	Francis Brennan (D)	34.2	36.1	9,815	9,811
7	William Widnall*(R)	No Opp.	58.0	33,938	30,567
	Arthur Lesemann (D)	No Opp.	39.9	31,020	30,102
8	Robert Roe*(D)	No Opp.	63.1	66,101	66,706
	Walter Johnson (R)	No Opp.	36.9	756	776
9	Henry Helstoski*(D)	No Opp.	55.8	44,643	55,244
	Alfred Schiaffo (R)	74.8	44.2	59,790	60,812
10	Peter Rodino*(D)	57.4	79.7	113,169	90,115
	Kenneth Miller (R)	No Opp.	20.3	1,122	770

11	Joseph Minish*(D)	No Opp.	57.5	85,554	68,709
	Milton Waldor (R)	No Opp.	39.7	48,326	55,185
12	*Matthew Rinaldo (R)*	*No Opp.*	*63.5*	*130,232*	*131,790*
	Jerry English (D)	*68.1*	*36.1*	*36,335*	*32,839*
13	*Joseph Marasiti (R)*	*49.7*	*55.7*	*63,872*	*83,972*
	Helen Meyner (D)	*No Opp.*	*42.9*	*67,746*	*65,573*
14	Dominick Daniels*(D)	55.6	61.2	53,286	53,286
	Richard Bozzone (R)	70.9	34.3	2,871	6,320
	Edward Zampella (CAC)	No Opp.	3.1	7,923	7,923
15	Edward Patten*(D)	No Opp.	52.3	27,605	27,605
	Fuller Brooks (R)	No Opp.	47.7	51,333	51,081

[00019]

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.
	NEW MEXICO				
1	Manuel J. Lujan*(R)	90.5%	55.7%	$ 210,173	$ 212,093
	J.E. Gallegos (D)	35.1	44.3	127,386	126,219
2	Harold Runnels*(D)	No Opp.	72.2	99,198	91,784
	George Presson (R)	55.2	27.6	14,491	14,810

	NEW YORK				
1	Otis Pike* (D)	No Opp.	52.5	54,327	51,842
	Joseph Boyd (R)	No Opp.	36.9	78,887	90,302
	Robert Gardiner (CON)	No Opp.	9.5	37,717	37,877
2	James Grover* (R)	No Opp.	65.8	9,967	4,054
	Fern C. Dennison (D)	No Opp.	32.7	6,864	6,325
3	*Angelo D. Roncallo (R)*	*No Opp.*	*53.1*	*89,313*	*109,652*
	Carter F. Bales (D)	*51.4*	*37.6*	*109,219*	*112,455*
4	Norman F. Lent* (R)	No Opp.	62.4	52,825	45,306
	Elaine B. Horowitz (D)	No Opp.	35.9	20,150	27,178
5	John W. Wydler* (R)	No Opp.	62.4	50,105	44,644
	Ferne M. Steckler (D)	No Opp.	31.7	28,369	25,333
6	Lester L. Wolff* (D)	No Opp.	51.5	64,072	64,069
	John T. Gallagher (R)	No Opp.	48.5	36,398	45,449
7	Joseph P. Addabbo* (D)	64.2	75.0	24,128	22,487
	John E. Hall (R)	No Opp.	20.6	1,201	1,540
8	Benjamin S. Rosenthal* (D)	No Opp.	64.7	18,892	18,739
	Frank A. La Pina (R)	No Opp.	35.3	6,279	6,279
9	James J. Delaney* (D)	55.4	93.4	56,173	56,396
10	Mario Biaggi* (D)	No Opp.	93.9	13,066	12,719
11	Frank J. Brasco* (D)	73.0	63.9	43,723	38,943
	Melvin Solomon (R)	52.6	31.3	-0-	-0-

12	Shirley Chisholm* (D)	No Opp.	87.9	5,800	4,796
	John M . Coleman (R)	No Opp.	9.7	-0-	-0-
13	Bertram L. Podell* (D)	68.0	65.1	84,107	71,852
	Joseph P. Marcucci (R)	56.2	25.5	350	1,842
	Leonard M. Simon (LIB)	No Opp.	5.3	51,846	52,235
14	(1)John J. Rooney* (D)	54.2	53.9	117,855	110,054
	Allard K. Lowenstein (LIB)	45.8	28.1	281,028	285,475
	Francis S. Voyticky (R)	51.4	17.5	270	270
15	Hugh L. Carey* (D)	No Opp.	52.1	90,294	122,905
	John Gangemi (R)	No Opp.	43.0	49,519	49,296
16	*Elizabeth Holtzman (D)*	*44.5*	*65.6*	*84,724*	*104,318*
	Nicholas Macchio (R)	*62.4*	*22.9*	*-0-*	*-0-*
17	John Murphy* (D)	No Opp.	60.3	82,585	105,581
	Mario Belardino (R)	No Opp.	39.7	88,180	87,559
18	Edward Koch* (D)	No Opp.	69.9	69,295	69,295
	Jane Langley (R)	No Opp.	29.3	107,812	120,351
19	Charles Rangel* (D)	75.6	96.0	33,834	31,390
20	Bella Abzug* (D)	31.2	55.7	169,731	164,245
	Priscilla Ryan (LIB)	No Opp.	28.0	52,713	51,412
	Annette Levy (R)	No Opp.	11.8	2,360	2,360
	Harvey Michelman (CON)	No Opp.	4.1	5,274	5,261

1 Rooney and Lowenstein were both involved in a court ordered second Democratic primary.

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.
	NEW YORK CONT'D				
21	Herman Badillo*(D)	77.8%	86.9%	$ 52,487	$ 52,558
	Manuel Ramos (R)	22.2	11.4	26,950	26,950
22	Jonathan Bingham*(D)	55.5	76.5	127,376	126,138
	Charles Avarello (R)	No Opp.	23.5	16,460	16,416
23	Peter Peyser* (R)	No Opp.	50.4	173,528	154,567
	Richard Ottinger (D)	No Opp.	49.6	198,914	195,784
24	Ogden Reid* (D)	No Opp.	52.2	164,224	209,007
	Carl Vergari (R)	71.5	47.8	190,890	190,890
25	Hamilton Fish* (R)	No Opp.	71.7	27,072	23,208
	John Burns (D)	No Opp.	26.9	19,347	18,431
26	Benjamin Gilman (R)	57.9	47.8	100,623	112,729
	John Dow* (D)	No Opp.	39.3	68,184	52,197
	Yale Rapkin (I)	42.1	12.9	94,193	80,595
27	Howard W. Robison*(R)	No Opp.	62.2	14,998	14,853
	David H. Blazer (D)	No Opp.	29.8	1,746	2,585

28	Samuel Stratton*(D)	No Opp.	80.0	51,712	27,297
	John Ryan, Jr. (R)	No Opp.	20.0	1,299	1,308
29	Carleton J. King*(R)	No Opp.	69.9	24,555	17,567
	Harold B. Gordon (D)	No Opp.	30.1	2,849	2,849
30	Robert McEwen*(R)	85.4	66.0	12,261	9,861
	Ernest J. La Baff (D)	No Opp.	34.0	9,938	10,019
31	*Donald J. Mitchell (R)*	*33.3*	*51.0*	*82,811*	*81,740*
	John Buckley (LIB)	*No Opp.*	*3.7*	*39,643*	*39,643*
	Robert Castle (D)	*No Opp.*	*39.1*	*91,885*	*91,869*
	Franklin Nichols (Amer.)	*No Opp.*	*6.2*	*18,358*	*18,358*
32	James Hanley*(D)	No Opp.	57.2	76,134	63,011
	Leonard Koldin (R)	No Opp.	42.8	66,937	75,175
33	*William Walsh (R)*	*No Opp.*	*71.4*	*22,516*	*34,795*
	Clarence Kadys (D)	*No Opp.*	*28.6*	*19,283*	*19,283*
34	Frank Horton*(R)	No Opp.	72.1	37,909	32,326
	Jack Rubens (D)	No Opp.	23.5	5,412	5,411
35	Barber Conable*(R)	No Opp.	67.9	21,239	18,907
	Terence Spencer (D)	No Opp.	28.4	7,473	6,753
36	Henry Smith*(R)	No Opp.	57.3	72,547	72,678
	Richard McCarthy (D)	No Opp.	42.7	61,774	61,774
37	Thaddeus Dulski* (D)	No Opp.	72.2	13,206	8,018
	William McLaughlin (R)	No Opp.	27.8	3,316	3,316

38	Jack Kemp* (R)	No Opp.	73.2	93,717	89,617
	Anthony La Russo (D)	No Opp.	26.8	15,200	20,342
39	James Hastings* (R)	No Opp.	71.9	24,668	17,794
	Wilbur White (D)	No Opp.	28.1	450	1,663

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.
	NORTH CAROLINA				
1	Walter B. Jones* (D)	No Opp.	68.8%	$ 19,959	$ 8,727
	Gordon J. Bonner (R)	53.0%	31.2	4,394	17,057
2	L.H. Fountain* (D)	58.8	71.6	44,177	40,630
	Erick P. Little (R)	No Opp.	28.4	19,002	19,002
3	David N. Henderson* (D)	79.3	No Opp.	7,590	4,258
4	*Ike F. Andrews (D)* **	*52.1*	*50.4*	*121,326*	*110,947*
	Jack R. Hawke (R)	*No Opp.*	*49.6*	*77,678*	*77,573*
5	Wilmer Mizell* (R)	No Opp.	64.8	49,114	37,264
	Brooks Hays (D)	No Opp.	35.2	34,570	34,358
6	Richardson Preyer* (D)	No Opp.	93.9	9,642	8,657

7	*Charles Rose III (D)* **	*55.6*	*60.4*	*91,298*	*86,933*
	Jerry Scott (R)	*50.2*	*38.7*	*11,177*	*12,402*
8	Earl Ruth* (R)	No Opp.	60.2	41,016	29,110
	Richard Clark (D)	No Opp.	39.8	51,809	51,809
9	*James Martin (R)*	*80.4*	*58.9*	*135,874*	*149,508*
	James Beatty (D)	*84.1*	*41.1*	*71,856*	*63,107*
10	James T. Broyhill* (R)	No Opp.	72.5	40,568	34,251
	Paul Beck (D)	No Opp.	27.5	360	357
11	Roy Taylor* (D)	No Opp.	59.6	22,174	21,721
	Jesse Ledbetter (R)	No Opp.	40.4	11,085	12,066
	NORTH DAKOTA				
1	Mark Andrews* (R)	No Opp.	72.7	58,227	58,196
	Richard Ista (D)	No Opp.	27.1	18,935	18,935
	OHIO				
1	William Keating* (R)	No Opp.	70.3	76,450	71,848
	Karl Heiser (D)	No Opp.	29.7	12,594	13,453
2	Donald Clancy* (R)	88.8	62.8	45,923	27,034
	Penny Manes (D)	No Opp.	37.2	8,859	8,859
3	Charles Whalen* (R)	No Opp.	76.2	22,178	17,973
	John Lelak (D)	No Opp.	23.8	3,285	3,930

4	*Tennyson Guyer (R)*	*72.3*	*62.7*	*40,462*	*40,014*
	Dimitri Nicholas (D)	*32.1*	*37.3*	*38,412*	*38,412*
5	Delbert Latta*(R)	No Opp.	72.7	31,796	24,016
	Bruce Edwards (D)	No Opp.	27.3	4,132	3,645
6	William Harsha*(R)	No Opp.	No Opp.	2,500	1,665
7	Clarence Brown*(R)	No Opp.	73.3	51,111	31,534
	Dorothy Franke (D)	No Opp.	26.7	2,652	2,838
8	Walter Powell*(R)	67.0	52.2	67,814	66,098
	James Ruppert (D)	81.0	47.8	70,813	73,706
9	Thomas Ashley*(D)	89.0	69.1	27,781	17,416
	Joseph Richards (R)	46.9	30.9	20,019	20,019

[00022]

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.
	OHIO CONT'D				
10	Clarence Miller*(R)	86.9%	73.2%	$ 40,542	$ 26,983
	Robert Whealey (D)	59.2	26.8	4,251	5,452
11	William Stanton*(R)	No Opp.	68.2	21,743	19,853
	Dennis Callahan (D)	50.5	31.8	23,256	22,822

12	Samuel Devine*(R)	No Opp.	56.1	67,862	51,930
	James Goodrich (D)	No Opp.	43.9	105,987	125,145
13	Charles Mosher*(R)	80.6	68.1	19,502	13,218
	John Ryan (D)	No Opp.	31.9	5,593	5,593
14	John Seiberling*(D)	82.3	74.4	27,649	26,325
	Norman Holt (R)	77.5	25.6	4,779	6,391
15	Chalmers Wylie* (R)	No Opp.	65.8	65,945	53,091
	Manly McGee (D)	50.1	31.5	20,475	23,398
16	*Ralph Regula (R)*	*85.7*	*57.3*	*81,468*	*81,383*
	Virgil Musser (D)	*57.6*	*42.7*	*24,800*	*23,328*
17	John Ashbrook*(R)	74.1	57.4	58,173	58,173
	Raymond Beck (D)	45.8	38.7	13,062	13,062
18	Wayne Hays*(D)	84.4	70.2	34,318	20,009
	Robert Stewart (R)	No Opp.	29.8	4,221	3,300
19	Charles Carney*(D)	57.1	64.0	69,148	54,037
	Norman Parr (R)	No Opp.	36.0	21,306	21,307
20	James Stanton*(D)	76.0	84.3	44,792	44,272
	Thomas Vilt (R)	No Opp.	11.9	8,157	8,157
21	Louis Stokes*(D)	82.5	81.1	17,718	17,718
	James Johnson (R)	No Opp.	11.3	6,992	7,531

22	Charles A. Vanik*(D)	No Opp.	63.9	36,067	36,067
	Donald Gropp (R)	No Opp.	32.6	114,646	120,430
23	William Minshall*(R)	87.1	49.4	133,233	127,212
	Dennis Kucinich (D)	51.0	47.3	28,096	28,096
	OKLAHOMA				
1	*James R. Jones (D)*	*80.4*	*54.5*	*63,405*	*64,850*
	James Hewgley (R) **	*50.8*	*43.7*	*179,986*	*179,986*
2	*Clem McSpadden (D)*	*62.3*	*71.1*	*93,654*	*93,103*
	Emery Toliver (R)	*No Opp.*	*28.9*	*7,787*	*7,787*
3	Carl Albert*(D)	84.7	93.4	39,170	7,275
4	Tom Steed*(D)	87.5	71.3	17,141	6,609
	William E. Crozier (R)	No Opp.	28.7	3,310	3,622
5	John Jarman*(D)	65.0	60.4	66,351	27.534
	Llewellyn Keller (R)	51.0	39.6	8,751	7,798
6	John N. Camp* (R)	No Opp.	72.7	33,492	33,492
	William Patrick Schmitt (D)	No Opp.	27.3	5,310	5,310

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.
	OREGON				
1	Wendall Wyatt* (R)	No Opp.	68.6%	$ 75,093	$ 75,093
	Ralph Bunch (D)	66.9%	31.4	6,871	6,810
2	Al Ullman* (D)	No Opp.	No Opp.	61,106	13,307
3	Edith Green* (D)	No Opp.	62.4	41,726	41,031
	Michael Walsh (R)	No Opp.	37.5	58,080	58,403
4	John Dellenback* (R)	78.7	62.5	54,659	49,711
	Charles Porter (D)	33.1	37.4	19,406	20,635
	PENNSYLVANIA				
1	William Barrett* (D)	No Opp.	66.1	16,261	16,261
	Gus Pedicone (R)	No Opp.	33.2	44,574	43,547
2	Robert Nix* (D)	47.0	70.1	7,837	4,073
	Frederick Bryant (R)	71.4	29.9	5,865	4,936
3	William Green* (D)	57.2	63.3	66,088	65,107
	Alfred Marroletti (P)	No Opp.	36.2	17,813	16,938
	Anthony Monteiro (Com)	No Opp.	0.5	13,106	12,861
4	Joshua Eilberg* (D)	No Opp.	55.9	70,028	61,471
	William Pfender (R)	No Opp.	44.1	101,820	102,923

5	John Ware* (R)	49.5	64.7	29,506	26,200
	Brower Yerger (D)	52.3	35.3	6,230	6,841
6	Gus Yatron* (D)	No Opp.	64.5	60,979	56,237
	Eugene Hubler (R)	63.8	34.6	17,277	16,623
7	Lawrence Williams* (R)	No Opp.	60.6	81,955	73,023
	Stuart Bowie (D)	No Opp.	39.4	13,881	11,879
8	Edward Biester* (R)	80.3	64.4	17,862	17,345
	Alan Williams (D)	45.3	35.6	25,236	24,219
9	*E.G. Shuster (R)*	*61.3*	*61.8*	*64,231*	*73,852*
	Earl Collins (D)	*No Opp.*	*38.2*	*17,461*	*17,815*
10	Joseph McDade* (R)	No Opp.	73.6	26,943	24,934
	Stanley Coveleskie (D)	67.3	26.4	4,049	6,281
11	Daniel Flood* (D)	88.0	68.3	28,688	26,393
	Donald Ayers (R)	55.6	31.7	10,115	10,113
12	John Saylor* (R)	72.1	68.1	38,839	34,992
	Joseph Murphy (D)	No Opp.	31.9	20	95
13	Lawrence Coughlin* (R)	No Opp.	66.6	36,941	36,423
	Katherine Camp (D)	59.9	33.4	35,301	34 263
14	William Moorhead* (D)	85.7	59.3	38,313	36,205
	Roland Catarinella (R)	No Opp.	40.4	82,409	78,400

15	Fred Rooney* (D)	86.0	60.8	34,858	29,315
	Wardell Steigerwalt (R)	No Opp.	39.2	2,170	2,170
16	Edwin Eshleman* (R)	No Opp.	73.5	15,433	14,041
	Shirley Garrett (D)	No Opp.	26.5	1,305	2,242

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.
	PENNSYLVANIA CONT'D				
17	Herman Schneebeli* (R)	No Opp.	72.2%	$ 59,376	$ 19,311
	Donald Rippon (D)	No Opp.	26.5	2,230	2,386
18	H. John Heinz* (R)	No Opp.	72.8	109,700	103,542
	Douglas Walgren (D)	No Opp.	27.2	3,320	3,123
19	George Goodling* (R)	60.0%	57.5	43,862	37,168
	Richard Noll (D)	No Opp.	41.2	13,159	13,159
20	Joseph Gaydos* (D)	No Opp.	61.5	42,522	44,379
	William Hunt (R)	No Opp.	38.5	64,701	63,843
21	John Dent* (D)	64.5	62.0	46,09[illegible]	32,024
	Thomas Young (R)	No Opp.	38.0	325	325
22	Thomas Morgan* (D)	72.5	60.8	44,340	32,157
	James Montgomery (R)	55.6	39.2	807	807

23	Albert Johnson*(R)	61.4	56.5	28,907	31,582
	Ernest Kassab (D)	56.9	43.5	53,656	66,948
24	Joseph Vigorito*(D)	86.2	68.8	13,692	13,504
	Alvin Levenhagen (R)	No Opp.	31.2	11,856	10,479
25	Frank Clark*(D)	No Opp.	55.8	20,350	26,444
	Gary Myers (R)	64.9	44.2	6,963	8,910
	RHODE ISLAND				
1	Fernand St. Germain*(D)	No Opp.	62.3	51,186	48,071
	John Feeley (R)	No Opp.	34.7	20,371	20,371
2	Robert Tiernan*(D)	No Opp.	63.1	42,034	47,418
	Donald Ryan (R)	No Opp.	36.9	6,000	5,012
	SOUTH CAROLINA				
1	Mendel Davis*(D)	72.5	54.5	86,009	84,377
	Sidi Limehouse (R)	No Opp.	45.5	101,225	100,902
2	Floyd Spence*(R)	No Opp.	No Opp.	20,676	5,936
3	W. J. Bryan Dorn * (D)	No Opp.	75.2	25,649	24,797
	Roy Ethridge (R)	No Opp.	24.8	5,780	5,849
4	James Mann*(D)	No Opp.	66.1	35,515	35,475
	Wayne Whatley (R)	No Opp.	33.9	13,913	14,322
5	Tom Gettys*(D)	No Opp.	60.9	26,655	22,640
	Leonard Phillips (R)	No Opp.	39.1	14,468	14,349

6	*Edward Young (R)*	*No Opp.*	*54.4*	*90,257*	*93,590*
	John Jenrette (D) **	*50.6*	*45.6*	*94,019*	*94,019*
	SOUTH DAKOTA				
1	Frank Denholm*(D)	No Opp.	60.5	41,062	40,445
	John Vickerman (R)	No Opp.	39.5	53,017	52,588
2	*James Abdnor (R)*	*64.4*	*54.9*	*96,252*	*96,252*
	Patrick Mc Keever (D)	*No Opp.*	*45.1*	*62,271*	*62,235*

[00025]

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.
	TENNESSEE				
1	James Quillen*(R)	No Opp.	79.4%	$ 17,065	$ 3,799
	Bernard Cantor (D)	No Opp.	20.6	5,807	5,807
2	John Duncan*(R)	No Opp.	No Opp.	8,928	9,585
3	Lamar Baker*(R)	No Opp.	55.2	78,502	77,199
	Howard Sompayrac (D)	No Opp.	41.9	40,856	39,974
4	Joe L. Evins*(D)	No Opp.	81.1	12,455	11,520
	Billy Joe Finney (R)	No Opp.	18.9	500	1,738

5	Richard Fulton* (D)		73.2%	62.6	80,219	83,697
	Alfred T. Adams, Jr. (R)		72.9	36.8	99,493	97,482
6	Robin L. Beard (R)		76.8	55.3	149,697	151,605
	William R. Anderson* (D)		60.7	43.1	98,087	105,022
7	Ed Jones* (D)		No Opp.	70.5	48,600	81,789
	Stockton Adkins (R)		No Opp.	29.5	20,307	20,136
8	Dan Kuykendall* (R)		No Opp.	55.4	127,913	119,023
	J.O. Patterson, Jr. (D)		74.9	44.1	83,433	67,444
	TEXAS					
1	Wright Patman* (D)		57.5	No Opp.	22,025	26,423
2	*Charles Wilson (D)*		*63.0*	*73.8*	*87,836*	*93,579*
	Charles Brightwell (R)		*65.2*	*26.2*	*2,772*	*2,784*
3	James Collins* (R)		67.7	73.3	155,304	147,487
	George Hughes (D)		59.9	26.7	2,566	2,775
4	Ray Roberts* (D)		No Opp.	70.2	6,383	6,383
	James Russell (R)		No Opp.	29.8	502	685
5	Alan Steelman (R)	**	63.2	55.7	69,551	69,581
	Earle Cabell* (D)		76.2	44.3	72,352	67,800
6	Olin Teague* (D)		No Opp.	72.6	12,976	3,668
	Carl Nigliazzo (R)		No Opp.	27.4	2,511	2,287

7	Bill Archer* (R)		No Opp.	82.3	82,512	72,173
	Jim Brady (D)		75.8	17.7	17,890	18,500
8	Bob Eckhardt* (D)		79.6	64.6	17,763	15,463
	Lewis Emerich (R)		No Opp.	34.7	9,634	9,392
9	Jack Brooks* (D)		No Opp.	66.2	76,473	33,565
	Randolph Reed (R)		No Opp.	33.8	6,565	6,527
10	J.J. Pickle* (D)		No Opp.	91.2	-0-	-0-
	Melissa Singler (SW)		No Opp.	8.8	-0-	-0-
11	(2)W.R. Poage* (D)		61.2	No Opp.	49,915	36,549
12	Jim Wright* (D)		No Opp.	No Opp.	6,713	2,765
13	Robert Price* (R)		No Opp.	54.8	206,774	206,171
	Graham Purcell* (D)		No Opp.	45.2	156,179	149,453
14	John Young* (D)		63.7	No Opp.	29,993	17,706
15	Eligio de la Garza* (D)		84.7	No Opp.	7,365	4,456

2 Contributions for W.R. Poage exclude over $18,000 in returned contributions.

Cong. Dist.	Source: Common Cause Campaign Monitoring Project		Primary Vote %	General Election Vote %	Contrib.	Expend.
	TEXAS CONT'D					
16	Richard White*(D)		No Opp.	No Opp.	$ 5,197	$ 2,009
17	Omar Burleson* (D)		No Opp.	No Opp.	17,062	5,341
18	*Barbara Jordan (D)*		*80.4%*	*80.6%*	*61,886*	*57,065*
	Paul Merritt (R)		*79.0*	*18.2*	*3,875*	*3,257*
19	George Mahon*(D)		No Opp.	No Opp.	3,288	4,358
20	Henry Gonzalez* (D)		No Opp.	96.9	1,612	1,012
	Steve Wattenmaker (SW)		No Opp.	3.1	-0-	-0-
21	O.C. Fisher*(D)		No Opp.	56.8	26,198	18,463
	Doug Harlan (R)		60.3	43.2	34,422	32,810
22	Bob Casey*(D)		69.5	70.2	97,311	93,322
	Jim Griffin (R)		73.0	29.0	3,122	3,108
23	Abraham Kazen, Jr.*(D)		75.0	No Opp.	17,678	8,354
24	*Dale Milford (D)*	**	*54.2*	*65.1*	*94,410*	*92,963*
	Courtney Roberts (R)	**	*72.3*	*34.9*	*33,247*	*33,247*

	UTAH				
1	Gunn McKay* (D)	No Opp.	55.4	52,647	52,320
	Robert Wolthuis (R)	53.0	42.0	61,669	62,472
2	Wayne Owens (D)	No Opp.	54.5	127,686	118,252
	Sherman Lloyd* (R)	68.2	44.0	109,571	90,591
	VERMONT				
1	Richard Mallary* (R)	No Opp.	65.0	11,289	4,085
	William Meyer (D)	No Opp.	35.0	5,122	5,193
	VIRGINIA				
1	Thomas N. Downing* (D)	No Opp.	78.1	47,601	48,469
	Kenneth Wells (R)	No Opp.	21.9	34,376	35,264
2	William G. Whitehurst* (R)	No Opp.	73.4	52,102	45,864
	Charles L. Burlage (D)	No Opp.	26.6	42,790	42,790
3	David Satterfield* (D)	No Opp.	No Opp.	3,476	-0-
4	*Robert W. Daniel, Jr. (R)*	*No Opp.*	*47.1*	*59,237*	*59,140*
	Robert E. Gibson (D)	*No Opp.*	*37.5*	*33,902*	*40,546*
5	W.C. Daniel, Jr.* (D)	No Opp.	No Opp.	3,892	3,429
6	*Caldwell Butler (R)*	*No Opp.*	*54.6*	*104,127*	*116,363*
	Willis M. Anderson (D)	*No Opp.*	*39.2*	*49,578*	*49,078*
7	Kenneth Robinson* (R)	No Opp.	66.2	108,336	73,777
	Murat Williams (D)	No Opp.	33.8	44,735	44,972

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.
8	*Stanford E. Parris (R)*	*63.3*	*44.4*	*111,817*	*109,271*
	Robert F. Horan, Jr. (D)	*42.2*	*37.8*	*53,670*	*53,129*
	William Durland (I)	*No Opp.*	*13.7*	*35,777*	*41,176*
	Robert Harris (I)	*No Opp.*	*4.1*	*18,855*	*18,956*
9	William C. Wampler* (R)	No Opp.	71.9	35,304	23,937
	Zane Dale Christian (D)	No Opp.	26.4	15,708	29,534

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.
	VIRGINIA CONT'D				
10	Joel T. Broyhill* (R)	No Opp.	56.3%	$ 185,237	$ 141,290
	Harold Miller (D)	No Opp.	43.7	93,087	91,501
	WASHINGTON				
1	*Joel Pritchard (R)*	*75.8%*	*50.3*	*112,631*	*112,933*
	John Hempelmann (D)	*71.2*	*49.1*	*84,644*	*84,136*
2	Lloyd Meeds* (D)	No Opp.	60.5	53,655	42,062
	Bill Reams (R)	63.3	39.5	54,717	54,717
3	Julia Hansen* (D)	63.5	66.3	61,016	43,351
	R.C. McConkey (R)	61.8	33.7	4,318	4,309

4	Mike McCormack* (D)	No Opp.	52.1	70,543	66,130
	Stewart Bledsoe (R)	56.6	47.9	141,560	141,560
5	Thomas Foley* (D)	No Opp.	81.3	42,890	27,476
	Clarice Privette (R)	No Opp.	18.7	500	500
6	Floyd Hicks* (D)	No Opp.	72.1	33,854	7,770
	Thomas Lowry (R)	No Opp.	27.9	23,995	23,888
7	Brock Adams* (D)	No Opp.	85.4	77,640	36,058
	J.J. Freeman (R)	No Opp.	12.1	512	512
	WEST VIRGINIA				
1	Robert Mollohan* (D)	No Opp.	69.4	30,836	29,619
	George Kapnicky (R)	No Opp.	30.6	2,387	2,392
2	Harley Staggers* (D)	73.0	70.0	29,520	29,520
	David Dix (R)	No Opp.	30.0	3,847	3,897
3	John Slack* (D)	No Opp.	63.7	26,018	12,019
	David Higgins (R)	No Opp.	36.3	4,356	4,358
4	Ken Hechler* (D)	52.2	61.0	21,976	20,249
	Joe Neal (R)	No Opp.	39.0	36,398	36,362
	WISCONSIN				
1	Les Aspin* (D)	91.4	64.4	82,852	70,326
	Merril Stalbaum (R)	43.1	34.9	12,062	12,062

2	Robert Kastenmeier* (D)	No Opp.	68.2	38,861	24,997
	Michael Kelly (R)	58.5	31.4	23,080	23,080
3	Vernon Thomson* (R)	79.6	54.7	76,866	76,853
	Walter Thoresen (D)	39.0	44.6	49,202	49,328
4	Clement Zablocki*(D)	83.2	75.7	16,782	15,871
	Philip Mrozinski (R)	No Opp.	22.8	375	375
5	Henry Reuss*(D)	No Opp.	77.3	14,829	12,613
	Frederick Van Hecke (R)	No Opp.	20.4	4,730	4,743
6	William Steiger*(R)	No Opp.	65.8	34,708	33,599
	James Adams (D)	No Opp.	32.0	6,548	6,528
7	David Obey*(D)	No Opp.	62.8	74,427	64,054
	Alvin O'Konski*(R)	55.0	37.2	42,480	42,772
8	*Harold Froehlich(R)*	*38.1*	*50.4*	*85,759*	*78,640*
	Robert Cornell (D)	*72.9*	*48.5*	*34,413*	*28,680*
9	Glenn Davis*(R)	58.6	61.4	72,879	59,737
	Ralph Fine (D)	No Opp.	36.7	6,579	6,579
	WYOMING				
1	Teno Roncalio*(D)	No Opp.	51.7	$ 65,646	$ 50,548
	Bill Kidd (R)	51.1	48.3	122,712	122,580

[000028]

4. The following list contains the total campaign contributions and expenditures for all major party and significantly financed minor party or independent candidates in the 1972 Senate races.

(The winning candidate is listed first. The contests printed in italic are those in which there was no incumbent; those printed in roman had an incumbent candidate.)

	Vote Margin	CONTRIBUTIONS Total Contributions	Ratio**	EXPENDITURES Total Expenditures	Ratio**
ALABAMA					
John Sparkman* (D)	63.9%	$ 703,342	$0.90	$ 702,109	$0.92
Winton Blount (R)	32.5%	774,039	1.00	764,961	1.00
ALASKA					
Ted Stevens* (R)	77.9%	$ 259,856	$5.60	$ 195,123	$4.14
Gene Guess (D)	22.1%	46,348	1.00	47,131	1.00
ARKANSAS					
John McClellan* (D)	60.9%	$ 516,666	$7.11	$ 516,573	$7.11
Wayne Babbitt (R)	39.1%	72,643	1.00	72,643	1.00
COLORADO					
Floyd Haskell (D)	49.6%	$ 178,024	$0.52	$ 176,243	$0.57
Gordon Allott* (R)	49.1%	344,457	1.00	308,305	1.00

DELAWARE					
Joseph Biden (D)	50.5%	$ 238,762	$1.42	$ 262,699	$1.57
Caleb Boggs* (R)	49.2%	167,657	1.00	167,657	1.00
GEORGIA					
Sam Nunn (D)	*53.6%*	*$ 629,570*	*$1.39*	*$ 567,968*	*$1.28*
Fletcher Thompson (R)	*46.4%*	*454,586*	*1.00*	*444,635*	*1.00*
IDAHO					
James McClure (R)	*52.3%*	*$ 446,382*	*$2.00*	*$ 405,788*	*$1.98*
William Davis (D)	*45.5%*	*222,963*	*1.00*	*204,878*	*1.00*
ILLINOIS					
Charles Percy* (R)	61.4%	$1,399,374	$4.12	$1,408,822	$4.20
Roman Pucinski (D)	38.6%	339,402	$1.00	335,482	1.00
IOWA					
Dick Clark (D)	54.6%	244,714	$0.73	241,803	$0.74
Jack Miller*(R)	44.7%	335,276	1.00	328,263	1.00
KANSAS					
James Pearson* (R)	72.2%	$ 202,145	$38.68	$ 105,651	$15.67
Arch Tetzlaff (D)	23.2%	5,226	1.00	6,742	1.00

SOURCE: Campaign Finance Monitoring Project
c by Common Cause 1973

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	Vote Margin	CONTRIBUTIONS Total Contributions	Ratio**	EXPENDITURES Total Expenditures	Ratio**
KENTUCKY					
Walter Huddleston(D)	*51.0%*	*$ 653,412*	*$1.07*	*$ 658,590*	*$1.09*
Louie Nunn (R)	*47.6%*	*611,013*	*1.00*	*603,649*	*1.00*
Louisiana					
Bennett Johnston (D)	*54.9%*	*$ 556,912*	*$1.09*	*$ 511,616*	*$1.00*
John McKeithen (I)	*23.2%*	*394,510*	*1.00*	*394,510*	*1.00*
Ben Toledano (R)	*19.0%*	*118,906*		*156,347*	
MAINE					
William Hathaway (D)	53.3%	$ 202,798	$15.07	$ 202,208	$13.53
Margaret C. Smith*(R)	46.7%	13,461	1.00	14,950	1.00
MASSACHUSETTS					
Edward Brooke* (R)	64.6%	$ 672,334	$8.11	$ 368,038	$4.40
John Droney (D)	35.4%	82,888	1.00	82,888	1.00
MICHIGAN					
Robert Griffin*(R)	52.2%	$1,443,304	$2.65	$1,394,927	$2.54
Frank Kelley (D)	46.7%	544,009	1.00	547,819	1.00

MINNESOTA					
Walter Mondale* (D)	56.7%	$ 497,851	$1.63	$ 538,532	$1.77
Philip Hansen (R)	42.9%	305,131	1.00	304,750	1.00
MISSISSIPPI					
James Eastland* (D)	57.9%	$ 416,900	$2.72	$ 410,221	$2.69
Gil Carmichael (R)	39.0%	153,307	1.00	152,531	1.00
MONTANA					
Lee Metcalf* (D)	51.9%	$ 194,557	$0.69	$ 136,551	$0.48
Henry Hibbard (R)	48.1%	284,164	1.00	286,748	1.00
NEBRASKA					
Carl Curtis* (R)	52.5%	$ 280,753	$17.01	$ 250,392	$6.48
Terry Carpenter (D)	47.5%	16,500	1.00	38,629	1.00
NEW HAMPSHIRE					
Thomas McIntyre* (D)	56.9%	$ 90,162	$0.86	$ 82,800	$0.79
Wesley Powell (R)	43.1%	104,907	1.00	104,779	1.00
NEW JERSEY					
Clifford Case* (R)	63.0%	$ 170,584	$3.69	$ 145,275	$3.15
Paul Krebs (D)	35.9%	46,242	1.00	46,160	1.00
NEW MEXICO					
Pete Domenici (R)	*54.1%*	*$ 489,380*	*$1.06*	*$ 517,310*	*$1.04*
Jack Daniels (D)	*45.9%*	*463,735*	*1.00*	*496,980*	*1.00*

SOURCE: Campaign Finance Monitoring Project
c by Common Cause 1973

	Vote Margin	Total Contributions	Ratio**	Total Expenditures	Ratio**
NORTH CAROLINA					
Jesse Helms (R)	*54.1%*	*$ 659,895*	*$1.33*	*$ 654,246*	*$1.39*
Nick Galifianakis(D)	*45.9%*	*496,667*	*1.00*	*470,093*	*1.00*
OKLAHOMA					
Dewey Bartlett (R)	*51.5%*	*$ 625,639*	*$1.19*	*$ 625,095*	*$1.22*
Ed Edmondson (D)	*47.9%*	*525,900*	*1.00*	*512,058*	*1.00*
OREGON					
Mark Hatfield* (R)	53.7%	$ 286,849	$1.24	$ 299,626	$1.19
Wayne Morse (D)	46.3%	231,682	1.00	251,904	1.00
RHODE ISLAND					
Claiborne Pell* (D)	54.1%	$ 515,685	$1.09	$ 528,347	$1.15
John Chafee (R)	45.9%	472,984	1.00	457,409	1.00
SOUTH CAROLINA					
Strom Thurmond* (R)	63.7%	$ 666,263	$4.26	$ 666,329	$3.97
Eugene Zeigler (D)	36.3%	156,473	1.00	167,755	1.00
SOUTH DAKOTA					
James Abourezk (D)	*57.0%*	*$ 421,215*	*$1.33*	*$ 427,063*	*$1.42*
Robert Hirsch (R)	*43.0%*	*316,313*	*1.00*	*300,800*	*1.00*

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TENNESSEE					
Howard Baker* (R)	61.8%	$ 887,817	$3.70	$ 830,769	$3.40
Leonard Blanton(D)	38.2%	239,699	1.00	244,653	1.00
TEXAS					
John Tower* (R)	53.3%	$2,303,355	$3.65	$2,301,870	$3.66
Barefoot Sanders (D)	44.5%	630,440	1.00	629,008	1.00
VIRGINIA					
William Scott (R)	51.7%	$ 648,138	$1.68	$ 619,908	$1.63
William Spong* (D)	45.9%	384,804	1.00	380,921	1.00
WEST VIRGINIA					
Jennings Randolph*(D)	66.3%	$ 129,859	$2.71	$ 133,670	$2.94
Louise Leonard (R)	33.7%	$ 47,861	1.00	45,513	1.00
WYOMING					
Clifford Hansen*(R)	71.2%	$ 261,923	$25.21	$ 169,878	$16.31
Mike Vinich (D)	28.8%	10,388	1.00	10,411	1.00

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* Incumbent

**Figures are the relationship between winning and losing candidates. They show how much the winner collected and spent for each one dollar collected and spent by the loser.

SOURCE: Campaign Finance Monitoring Project
ć by Common Cause 1973

5. The following list contains the total campaign expenditures for all major party candidates and significantly financed minor party or independent candidates in 1974 House races.

On the list, winning candidates are listed first. Incumbents are indicated by an asterisk (*). The races printed in italics are those in which there was no incumbent in the general election. Candidates indicated by a double asterisk (**) won their primary after a runoff election. The primary vote percentage listed for those candidates is for the runoff. *Congressional Quarterly* is the source of all data on vote percentages.

The figures in the column headed (A) are based upon additional information regarding expenditures acquired subsequent to the filing of the Conway affidavit of April 21, 1975.

These additional figures are not included in the finding in paragraphs 11-22, 78-84, 97-99, *infra.* However, the inclusion of this additional information would not alter any of the aggregate figures in the above-stated paragraphs to a statistically significant extent.

EXPENDITURES FOR ALL NOVEMBER 1974 HOUSE RACES

Source: Common Cause Campaign Monitoring Project

Cong. Dist.		Primary Vote %	General Election Vote %	Expenditures
	ALABAMA			
1	Jack Edwards* (R)	No Opp.	59.5	$ 69,347
	Augusta E. Wilson (D)	No Opp.	37.0	57,288
2	William L. Dickinson* (R)	No Opp.	66.1	33,071
	Clair Chisler (D)	No Opp.	33.9	6,134
3	Bill Nichols* (D)	No Opp.	95.9	2,538
4	Tom Bevill* (D)	No Opp.	99.8	5,174
5	Robert E. Jones* (D)	No Opp.	No Opp.	1,262
6	John Buchanan* (R)	No Opp.	56.6	65,235
	Nina Miglionico (D)	64.6	41.0	71,291
7	Walter Flowers* (D)	66.3	91.0	26,604

Cong. Dist.			Primary Vote %	General Election Vote %	Expenditures
	ALASKA				
1	Donald E. Young* (R)		No Opp.	53.8	140,729
	William L. Hensley (D)		50.2	46.2	136,112
	ARIZONA				
1	John J. Rhodes* (R)		No Opp.	51.1	136,038
	Patricia M. Fullinwider (D)		69.1	42.3	20,136
2	Morris K. Udall* (D)		No Opp.	62.0	66.130
	Keith Dolgaard (R)		65.7	38.0	100,581
3	Sam Steiger* (R)		No Opp.	51.1	203,899
	Pat Bosch (D)		50.5	48.9	68,203
4	John B. Conlan* (R)		No Opp.	55.3	97,922
	Byron T. Brown (D)		No Opp.	44.7	55,126
	ARKANSAS				
1	Bill Alexander* (D)		No Opp.	90.6	19,691
	James L. Dauer (R)		No Opp.	9.3	1,060
2	Wilbur D. Mills* (D)		No Opp.	58.9	71,338
	Judy Petty (R)		No Opp.	41.1	55,573
3	J. P. Hammerschmidt* (R)		No Opp.	51.8	101,709
	Bill Clinton (D)	**	69.0	48.2	180,882
4	Ray Thornton* (D)		No Opp.	No Opp.	1,567

* Incumbent
** Primary Runoff Winner

[00034]

Source: Common Cause Campaign Monitoring Project

Cong. Dist.			Primary Vote %	General Election Vote %	Expenditures
	CALIFORNIA				
1	Harold Johnson* (D)		80.1	85.8	$ 30,467
2	Don H. Clausen* (R)		82.9	53.0	75,641
	Oscar Klee (D)		28.8	42.7	53,942
3	John Moss* (D)		No Opp.	72.3	23,145
	Ivaldo Lenci (R)		No Opp.	27.7	2,267
4	Robert Leggett* (D)		No Opp.	No Opp.	11,977

5	John L. Burton* (D)	70.5	59.6	25,457
	Thomas Caylor (R)	61.3	37.7	37,712
6	Phillip Burton* (D)	No Opp.	71.3	32,038
	Tom Spinosa (R)	No Opp.	21.8	10,749
7	*George Miller (D)*	*36.1*	*55.6*	*95,000*
	Gary Fernandez (R)	*No Opp.*	*44.4*	*76,829*
8	Ronald V. Dellums* (D)	69.6	56.6	78,339
	Jack Redden (R)	47.6	39.6	19,878
9	Fortney Stark* (D)	81.1	70.6	60,642
	Edson Adams (R)	No Opp.	29.4	23,778
10	Don Edwards* (D)	77.8	77.0	17,948
	John Enright (R)	51.9	23.0	425
11	Leo Ryan* (D)	83.5	75.8	22,778
	Brainard Merdinger (R)	No Opp.	21.3	2,074
12	Paul N. McCloskey* (R)	49.8	69.1	166,441
	Gary Gillmor (D)	31.9	30.9	37,128
13	*Norman Y. Mineta (D)*	*77.8*	*52.6*	*185,236*
	George W. Milias (R)	*46.3*	*42.4*	*122,239*

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14	John McFall* (D)	80.6	70.9	52,268
	Charles Gibson (R)	55.6	24.1	4,154
15	B. F. Sisk* (D)	No Opp.	72.0	55,723
	Carol Harner (R)	No Opp.	28.0	5,303
16	Burt L. Talcott* (R)	No Opp.	49.2	152,455
	Julian Camacho (D)	61.7	47.8	156,084
17	John Krebs (D)	61.5	51.9	130,193
	Robert B. Mathias* (R)	82.2	48.1	136,407

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[00035]

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Expenditures
	CALIFORNIA Cont'd			
18	William Ketchum* (R)	71.7	52.7	$ 69,806
	George Seielstad (D)	51.4	47.3	48,604
19	Robert J. Lagomersino* (R)	91.0	56.3	74,832
	James Loebl (D)	60.0	43.7	90,337

20	Barry M. Goldwater, Jr.* (R)	91.3	61.2	80,385	
	Arline Mathews (D)	42.8	38.8	21,212	
21	James C. Corman* (D)	No Opp.	73.5	77,204	(1)
	Mel Nadell (R)	No Opp.	26.5	3,603	
22	Carlos Moorhead* (R)	86.2	55.8	51,841	
	Richard Hallin (D)	66.6	44.2	68,449	
23	Thomas M. Rees* (D)	93.1	71.4	80,318	
	Jack Roberts (R)	No Opp.	28.6	5,520	
24	*Henry A. Waxman (D)*	*74.2*	*64.0*	*95,151*	
	Elliott Graham (R)	*30.5*	*33.0*	*22,411*	
25	Edward R. Roybal* (D)	No Opp.	No Opp.	24,630	
26	John Rousselot* (R)	No Opp.	58.9	66,043	
	Paul Conforti (D)	48.9	41.1	8,235	
27	Alphonzo Bell* (R)	81.6	63.9	32,270	
	John Dalessio (D)	36.1	32.5	29,025	
28	Yvonne Burke* (D)	89.8	80.1	29,739	
	Tom Neddy (R)	No Opp.	19.9	0	

29	Augustus Hawkins* (D)	87.0	No Opp.	6,268	
30	George Danielson* (D)	53.6	74.2	64,413	
	John Perez (R)	37.7	25.8	5,953	
31	Charles H. Wilson* (D)	56.2	70.4	70,813	
	Norman Hodges (R)	No Opp.	26.8	38,954	
32	Glenn Anderson* (D)	No Opp.	87.7	44,232	
33	Del Clawson* (R)	No Opp.	53.4	80,347	
	Robert White (D)	21.2	43.1	56,364	
34	*Mark W. Hannaford (D)*	*24.1*	*49.8*	*86,981*	
	Bill Bond (R)	*44.9*	*46.3*	*82,917*	

(1) According to the office of Rep. James Corman (D-Cal), the total expenditure listed includes Congressional office expenses and therefore is not exclusively campaign expenditures.

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Expenditures	A
	CALIFORNIA Cont'd				
35	Jim Lloyd (D)	23.4	50.3	$153,087	129,215
	Victor V. Veysey* (R)	75.5	49.7	147,861	
36	George Brown* (D)	75.7	62.6	43,635	
	Jim Osgood (R)	81.8	32.3	21,412	
37	Jerry Pettis* (R)	No Opp.	63.2	33,818	
	Bobby Ray Vincent (D)	39.9	32.9	9,732	
38	*Jerry M. Patterson (D)*	*46.6*	*54.0*	*165,696*	
	David Rehmann (R)	*46.1*	*41.3*	*120,744*	
39	Charles Wiggins* (R)	74.4	55.3	53,292	
	William Farris (D)	38.6	40.4	26,533	
40	Andrew J. Hinshaw* (R)	69.5	63.4	72,022	
	Roderick Wilson (D)	49.0	30.9	11,781	

41	Bob Wilson* (R)	No Opp.	54.5	149,467
	Colleen O'Connor (D)	29.9	43.0	51,980
42	Lionel Van Deerlin* (D)	No Opp.	69.9	38,462
	Wes Marden (R)	No Opp.	30.1	10,555
43	Clair Burgener* (R)	No Opp.	60.4	64,022
	Bill Bandes (D)	49.1	39.6	22,055
	COLORADO			
1	Patricia Schroeder* (D)	No Opp.	58.5	104,126
	Frank K. Southworth (R)	No Opp.	40.8	105,532
2	Timothy E. Wirth (D)	No Opp.	51.9	134,103
	Donald G. Brotzman* (R)	No Opp.	48.0	165,911
3	Frank Evans* (D)	62.1	67.9	30,855
	E. Keith Records (R)	No Opp.	32.1	5,120
4	James P. Johnson* (R)	No Opp.	52.0	53,940
	John S. Carroll (D)	No Opp.	48.0	62,704
5	William L. Armstrong* (R)	No Opp.	57.7	108,701
	Ben Galloway (D)	No Opp.	38.5	32,446

Cong. Dist.	Source: Common Cause Campaign Monitoring Project		Primary Vote %	General Election Vote %	Expenditures	A
	CONNECTICUT					
1	William Cotter* (D)		No Opp.	62.7	52,604	
	F. Mac Buckley (R)		No Opp.	35.9	28,045	

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Cong. Dist.	Source: Common Cause Campaign Monitoring Project		Primary Vote %	General Election Vote %	Expenditures	A
	CONNECTICUT Cont'd					
2	*Christopher J. Dodd (D)*		*No Opp.*	*59.0*	*$102,209*	
	Samuel B. Hellier (R)		*No Opp.*	*39.2*	*87,844*	
3	Robert Giaimo* (D)		No Opp.	65.1	40,079	
	James Altham, Jr. (R)		No Opp.	31.4	6,556	
4	Stewart B. McKinney* (R)		No Opp.	53.2	94,365	99,177
	James Kellis (D)		No Opp.	45.2	51,034	
5	Ronald A. Sarasin* (R)		No Opp.	50.4	134,440	
	William R. Ratchford (D)		61.2	48.0	86,808	
6	*Anthony J. Moffett (D)*		*58.0*	*63.4*	*144,806*	
	Patsy J. Piscopo (R)		*No Opp.*	*36.1*	*89,328*	
	DELAWARE					
1	Pierre DuPont* (R)		No Opp.	58.5	92,246	
	James Soles (D)		No Opp.	39.6	68,839	
	FLORIDA					
1	Robert Sikes* (D)		No Opp.	No Opp.	5,740	
2	Don Fuqua* (D)		85.7	No Opp.	32,316	
3	Charles Bennett* (D)		86.4	No Opp.	2,728	
4	Bill Chappell, Jr.* (D)		No Opp.	68.2	63,817	
	Warren Hauser (R)		No Opp.	31.8	17,116	
5	*Richard Kelly (R)*		*52.9*	*52.8*	*111,194*	
	JoAnn Saunders (D)	**	*55.9*	*44.8*	*62,119*	
6	C. W. Bill Young* (R)		No Opp.	75.8	32,105	
	Herbert Monrose (D)		No Opp.	24.2	4,771	

Cong. Dist.			Primary Vote %	General Election Vote %	Expenditures
7	Sam Gibbons* (D)		No Opp.	No Opp.	6,228
8	James Haley* (D)		74.8	56.7	15,879
	Joe Lovingood (R)	**	64.7	43.3	45,650
9	Louis Frey, Jr.* (R)		No Opp.	76.7	53,787
	William Rowland (D)		52.9	23.3	5,044
10	Skip Bafalis* (R)		No Opp.	73.7	32,735
	Evelyn Tucker (D)		No Opp.	26.3	4,360

Source: Common Cause Campaign Monitoring Project

Cong. Dist.			Primary Vote %	General Election Vote %	Expenditures
	FLORIDA Cont'd				
11	Paul Rogers* (D)		85.6	No Opp.	$ 15,517
12	J. Herbert Burke* (R)		74.5	51.0	30,554
	Charles Friedman (D)	**	51.1	49.0	32,038
13	William Lehman* (D)	**	67.7	No Opp.	81,915
14	Claude Pepper* (D)		No Opp.	69.1	26,393
	Michael Carricarte (R)		56.8	30.9	18,631
15	Dante Fascell* (D)		No Opp.	70.5	41,957
	S. Peter Capua (R)		No Opp.	29.5	47,775
	GEORGIA				
1	Ronald B. Ginn* (D)		No Opp.	86.1	27,277
	Bill Gowan (R)		No Opp.	13.9	1,627
2	Dawson Mathis* (D)		No Opp.	No Opp.	16,201
3	Jack Brinkley* (D)		No Opp.	87.7	26,824
	Carl Savage (R)		No Opp.	12.3	12,520
4	Elliott H. Levitas (D)		62.7	55.1	121,724
	Ben B. Blackburn* (R)		No Opp.	44.9	160,151
5	Andrew Young* (D)		No Opp.	71.6	83,481
	Wyman Lowe (R)		No Opp.	28.3	7,713
6	John Flynt, Jr.* (D)		No Opp.	51.5	33,035
	Newt Gingrich (R)		No Opp.	48.5	85,505

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Expenditures
7	*Lawrence P. McDonald (D)*	*51.7*	*50.3*	*188,093*
	Quincy Collins (R)	*73.1*	*49.7*	*66,827*
8	Bill Stuckey, Jr.* (D)	59.5	No Opp.	34,674
9	Phil Landrum* (D)	66.6	74.8	17,710
	Ronald Reeves (R)	No Opp.	25.2	2,140
10	Robert Stephens, Jr.* (D)	No Opp.	68.4	17,410
	Gary Pleger (R)	62.5	31.6	18,788

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Expenditures
	HAWAII			
1	Spark Matsunaga* (D)	No Opp.	59.3	$165,469
	William Paul (R)	No Opp.	40.7	29,799
2	Patsy T. Mink* (D)	70.0	62.6	97,104
	Carla Coray (R)	No Opp.	37.4	34,089
	IDAHO			
1	Steven D. Symms* (R)	No Opp.	58.3	125,268
	J. Ray Cox (D)	50.1	41.7	43,784
2	*George V. Hansen (R)*	*53.3*	*55.7*	*120,923*
	Max Hanson (D)	*76.2*	*44.3*	*20,982*
	ILLINOIS			
1	Ralph Metcalfe* (D)	No Opp.	93.7	37,900
	Oscar Haynes (R)	No Opp.	5.5	833
2	Morgan Murphy* (D)	79.2	87.5	12,299
	James Ginderske (R)	No Opp.	12.5	350
3	Martin A. Russo (D)	No Opp.	52.6	79,420
	Robert Hanrahan* (R)	81.2	47.4	40,912
4	Edward Derwinski* (R)	No Opp.	59.2	41,646
	Ronald Rodger (D)	53.3	40.8	18,301
5	John Kluczynski* (D)	No Opp.	86.0	22,269
	William Toms (R)	No Opp.	14.0	503
6	*Henry J. Hyde (R)*	*48.1*	*53.4*	*175,087*
	Edward V. Hanrahan (D)	*56.1*	*46.6*	*66,284*

7	Cardiss Collins* (D)	No Opp.	87.9	7,292
	Donald Metzger (R)	No Opp.	12.1	16,207
8	Dan Rostenkowski* (D)	No Opp.	86.5	25,720
	Salvatore Oddo (R)	No Opp.	13.5	0
9	Sidney Yates* (D)	No Opp.	No Opp.	11,226
10	Abner J. Mikva (D)	No Opp.	50.9	286,225
	Samuel H. Young* (R)	No Opp.	49.1	251,249
11	Frank Annunzio* (D)	89.0	72.4	58,239
	Mitchell Zadrozny (R)	No Opp.	27.6	33,362

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Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Expenditures
	ILLINOIS Cont'd			
12	Philip Crane* (R)	No Opp.	61.1	$ 60,122
	Betty Spence (D)	No Opp.	38.9	51,594
13	Robert McClory* (R)	71.0	54.5	38,921
	Stanley Beetham (D)	66.3	45.5	39,642
14	John Erlenborn* (R)	No Opp.	66.6	34,214
	Robert Renshaw (D)	47.0	33.4	3,474
15	*Tim L. Hall (D)*	*44.8*	*52.0*	*29,398*
	Clifford D. Carlson (R)	*24.1*	*45.6*	*110,540*
16	John B. Anderson* (R)	No Opp.	55.5	74,346
	Marshall Hungness (D)	No Opp.	28.7	4,587
17	George M. O'Brien* (R)	No Opp.	51.5	80,053
	John Houlihan (D)	73.3	48.5	24,863
18	Robert Michel* (R)	No Opp.	54.8	33,851
	Stephen Nordvall (D)	72.6	45.2	10,776
19	Tom Railsback* (R)	No Opp.	65.3	61,789
	Jim Gende (D)	50.3	34.7	43,533
20	Paul Findley* (R)	No Opp.	54.8	118,162
	Peter Mack (D)	52.7	45.2	53,369
21	Edward Madigan* (R)	No Opp.	65.8	68,372
	Richard Small (D)	52.2	34.2	21 431
22	George Shipley* (D)	No Opp.	59.8	50,328
	William A. Young (R)	71.3	40.2	91,781

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Expenditures
23	Melvin Price* (D)	90.3	80.5	27,847
	Scott Randolph (R)	No Opp.	19.5	670
24	*Paul Simon (D)*	*68.4*	*59.6*	*223,183*
	Val Oshel (R)	*57.7*	*40.4*	*80,566*
	INDIANA			
1	Ray Madden* (D)	74.5	68.6	20,416
	Joseph Harkin (R)	57.4	31.4	10,369
2	Floyd J. Fithian (D)	No Opp.	61.1	155,580
	Earl O. Landgrebe* (R)	No Opp.	38.9	73,909

[00041]

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Expenditures
	INDIANA Cont'd			
3	John Brademas* (D)	79.6	64.1	$145,733
	Virginia Black (R)	No Opp.	35.9	16,184
4	J. Edward Roush* (D)	89.8	51.9	57,615
	Walter P. Helmke (R)	68.0	46.5	77,576
5	Elwood Hillis* (R)	No Opp.	56.6	55,490
	William Sebree (D)	27.6	43.4	18,758
6	David Evans (D)	55.4	52.4	15,846
	William Bray* (R)	88.5	47.6	45,434
7	John Myers* (R)	No Opp.	57.1	44,556
	Eldon Tipton (D)	32.9	42.1	13,916
8	Philip Hayes (D)	48.4	53.4	67,429
	Roger H. Zion* (R)	87.0	46.6	122,329
9	Lee Hamilton* (D)	No Opp.	71.1	69,375
	Delson Cox, Jr. (R)	39.5	28.9	7,553
10	Philip R. Sharp (D)	68.5	54.4	74,199
	David W. Dennis* (R)	88.4	45.6	79,840
11	Andrew Jacobs, Jr. (D)	86.4	52.5	47,336
	William H. Hudnut* (R)	94.0	47.5	201,673

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Expenditures
	IOWA			
1	Edward Mezvinsky* (D)	No Opp.	54.4	81,166
	James A. Leach (R)	No Opp.	45.6	89,786
2	*Michael T. Blouin (D)*	*45.4*	*51.1*	*137,750*
	Tom Riley (R)	*69.0*	*48.1*	*107,884*
3	*Charles E. Grassley (R)*	*41.9*	*50.8*	*107,102*
	Stephen J. Rapp (D)	*35.8*	*49.2*	*100,007*
4	Neal Smith* (D)	No Opp.	63.9	0
	Chuck Dick (R)	No Opp.	35.5	55,231
5	Tom Harkin (D)	No Opp.	51.1	120,544
	William J. Scherle* (R)	No Opp.	48.9	103,582
6	Berkley Bedell (D)	No Opp.	54.6	130,742
	Wiley Mayne* (R)	No Opp.	45.4	96,085

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Expenditures
	KANSAS			
1	Keith Sibelius* (R)	No Opp.	58.4	$ 60,893
	Donald Smith (D)	46.0	33.0	64,428
2	*Martha Keys (D)*	*38.4*	*55.0*	*88,959*
	John C. Peterson (R)	*57.6*	*43.9*	*114,214*
3	Larry Winn, Jr.* (R)	No Opp.	62.9	77,681
	Samuel Wells (D)	50.6	35.0	26,318
4	Garner Shriver* (R)	No Opp.	48.8	67,446
	Bert Chaney (D)	43.1	42.5	24,467
	John S. Stevens (A)		8.7	2,922
5	Joe Skubitz* (R)	86.9	55.2	63,968
	Franklin D. Gaines (D)	57.6	44.8	99,553
	KENTUCKY			
1	*Carroll Hubbard, Jr. (D)*	*60.5*	*78.2*	*64,599*
	Charles Banker, Jr. (R)	*41.0*	*18.7*	*1,350*

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Expenditures	A
	LOUISIANA				
2	William Natcher* (D)	74.9	73.0	14,505	
	Art Eddleman (R)	No Opp.	23.7	21	
3	Romano Mazzoli* (D)	90.8	69.7	28,353	
	Vincent Barclay (R)	No Opp.	26.6	2,446	
4	Gene Snyder* (R)	No Opp.	51.7	86,973	
	Kyle Hubbard (D)	52.0	48.3	82,150	
5	Tim Lee Carter* (R)	No Opp.	68.2	18,763	
	Lyle Willis (D)	45.9	29.3	228	
6	John Breckinridge* (D)	83.0	72.1	20,932	
	Thomas Rogers III (R)	60.6	24.1	2,217	
7	Carl Perkins* (D)	No Opp.	75.6	2,100	
	Granville Thomas (R)	No Opp.	24.4	104	
	LOUISIANA				
1	F. Edward Hebert* (D)	80.1	No Opp.	4,712	
2	Corinne Boggs* (D)	87.2	81.8	49,846	
	Diane Morphos (R)	No Opp.	14.6	7,192	
3	David C. Treen* (R)	No Opp.	58.5	190,135	
	Charles Grisbaum, Jr. (D)	No Opp.	41.5	166,203	

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Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Expenditures	A
	LOUISIANA Cont'd				
4	Joe D. Waggonner, Jr.* (D)	No Opp.	No Opp.	$ 3,459	
5	Otto E. Passman* (D)	73.6	No Opp.	23,902	
6	*Henson Moore III (R)*	*No Opp.*	*54.1*	*158,971*	
	Jeff LaCaze (D) **	*51.6*	*45.9*	*229,335*	
7	John Breaux* (D)	87.7	89.3	29,991	
8	Gillis W. Long* (D)	No Opp.	No Opp.	36,325	
	MAINE				
1	David Emery (R)	No Opp.	50.2	68,040	70,044
	Peter Kyros* (D)	69.1	49.8	68,094	
2	William S. Cohen* (R)	No Opp.	71.4	91,548	
	Markham Gartley (D)	65.8	28.6	30,412	

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	MARYLAND				
1	Robert E. Bauman* (R)	No Opp.	53.0	137,046	
	Thomas Hatem (D)	56.2	47.0	48,043	
2	Clarence D. Long* (D)	No Opp.	77.1	33,181	
	John Seney (R)	No Opp.	22.9	6,234	
3	Paul Sarbanes* (D)	No Opp.	83.8	8,765	
	William Matthews (R)	No Opp.	16.2	193	
4	Marjorie S. Holt* (R)	No Opp.	58.1	99,717	
	Fred L. Wineland (D)	54.9	41.9	134,323	
5	*Gladys N. Spellman (D)*	*67.1*	*52.6*	*90,144*	
	John B. Burcham, Jr. (R)	*74.0*	*47.4*	*39,038*	
6	Goodloe Byron* (D)	75.1	73.7	31,308	
	Elton Wampler (R)	No Opp.	26.3	11,556	
7	Parren J. Mitchell* (D)	No Opp.	No Opp.	22,376	
8	Gilbert Gude* (R)	85.0	65.9	48,063	
	Sidney Kramer (D)	44.8	34.1	43,889	

	MASSACHUSETTS				
1	Silvio O. Conte* (R)	No Opp.	71.1	47,736	
	Thomas R. Manning (D)	55.1	28.9	8,067	

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Expenditures	A
	MASSACHUSETTS Cont'd				
2	Edward P. Boland* (D)	No Opp.	No Opp.	$ 56	
3	*Joseph D. Early (D)*	*31.8*	*49.5*	*120,584*	
	David J. Lionett (R)	*83.2*	*38.4*	*127,978*	120,978
	Douglas J. Rowe (Ind)		*12.0*	*69,267*	
4	Robert F. Drinan* (D)	No Opp.	50.8	178,871	
	Jon Rotenberg (Ind)	No Opp.	34.7	76,576	
	Alvin Mandell (R)	No Opp.	14.4	14,322	
5	Paul E. Tsongas (D)	72.5	60.6	105,267	
	Paul W. Cronin* (R)	No Opp.	39.4	124,049	
6	Michael J. Harrington* (D)	74.4	No Opp.	29,810	

7	Torbert H. MacDonald* (D)	No Opp.	79.8	15,596
8	Thomas P. O'Neill, Jr.* (D)	No Opp.	87.9	1,414
9	John Joseph Moakley* (D)	No Opp.	89.3	74,237
10	Margaret Heckler* (R)	No Opp.	64.2	71,100
	Barry Monahan (D)	No Opp.	35.8	34,012
11	James A. Burke* (D)	73.1	No Opp.	39,707
12	Gerry Studds* (D)	No Opp.	74.8	103,350
	J. Alan MacKay (R)	No Opp.	25.2	37,505
	MICHIGAN			
1	John Conyers, Jr.* (D)	No Opp.	90.7	20,292
	Walter Girardot (R)	No Opp.	8.7	85
2	Marvin L. Esch* (R)	No Opp.	52.3	106,747
	John S. Reuther (D)	31.5	45.4	112,860
3	Garry Brown* (R)	No Opp.	51.2	52,305
	Paul Todd, Jr. (D)	No Opp.	47.6	42,961

4	Edward Hutchinson* (R)	No Opp.	53.1	8,254
	Richard Daugherty (D)	No Opp.	45.5	7,606
5	Richard Vander Veen* (D)	No Opp.	52.6	143,603
	Paul G. Goebel (R)	54.5	43.4	158,891
	Dwight W. Johnson (AIP)		3.7	11,255
6	*Bob Carr (D)*	*72.4*	*49.3*	*157,478*
	Clifford W. Taylor (R)	*42.2*	*48.9*	*119,329*

[00045]

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Expenditures
	MICHIGAN Cont'd			
7	Donald Riegle, Jr.* (D)	81.0	64.7	$ 46,731
	Robert Eastman (R)	No Opp.	33.2	8,902
8	Bob Traxler* (D)	No Opp.	54.8	76,856
	James M. Sparling (R)	89.9	43.4	82,879
9	Guy Vander Jagt* (R)	No Opp.	56.6	51,196
	Norman Halbower (D)	No Opp.	42.1	21,382

10	Elford Cederberg* (R)	77.1	53.7	38,876
	Samuel Marble (D)	No Opp.	45.9	19,974
11	Philip Ruppe* (R)	No Opp.	50.9	45,240
	Francis Brouillette (D)	53.2	48.8	62,656
12	James G. O'Hara* (D)	No Opp.	72.2	22,289
	Eugene Tyza (R)	No Opp.	27.6	997
13	Charles Diggs, Jr.* (D)	No Opp.	87.4	400
	Gecrge McCall (R)	No Opp.	11.1	194
14	Lucien Nedzi* (D)	73.8	71.2	14,717
	Herbert Steiger (R)	No Opp.	27.1	0
15	William D. Ford* (D)	No Opp.	78.1	43,458
	Jack Underwood (R)	73.2	20.8	79
16	John Dingell* (D)	No Opp.	77.7	25,410
	Wallace English (R)	56.4	20.5	1,345
17	*William Brodhead (D)*	*27.4*	*69.5*	*55,180*
	Kenneth Gallagher (R)	*62.9*	*29.4*	*97*
18	James J. Blanchard (D)	33.8	58.7	133,021
	Robert J. Huber* (R)	No Opp.	40.2	120,426
19	William Broomfield* (R)	No Opp.	62.9	34,439
	George Montgomery (D)	No Opp.	36.9	6,357
	MINNESOTA			
1	Albert Quie* (R)	No Opp.	62.6	67,101
	Uric Scott (D)	63.3	37.4	54,539
2	*Tom Hagedorn (R)*	*72.8*	*53.1*	*148,833*
	Steve Babcock (D)	*51.8*	*46.9*	*142,812*

[00046]

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Expenditures
	MINNESOTA Cont'd			
3	Bill Frenzel* (R)	No Opp.	60.4	$104,815
	Bob Riggs (D)	71.9	39.6	33,486
4	Joseph Karth* (D)	No Opp.	76.0	58,551
	Joseph Rheinberger (R)	68.0	24.0	5,740
5	Donald Fraser* (R)	No Opp.	73.8	63,397
	Phil Ratte (D)	No Opp.	24.7	13,340

6	*Richard Nolan (D)*	*69.9*	*55.4*	*139,342*
	Jon Grunseth (R)	*78.4*	*44.6*	*121,048*
7	Bob Bergland* (D)	No Opp.	75.0	92,608
	Dan Reber (R)	No Opp.	25.0	15,082
8	*James Oberstar (D)*	*50.3*	*62.0*	*106,186*
	Jerome Arnold (R)	*68.1*	*26.1*	*38,435*
	MISSISSIPPI			
1	Jamie L. Whitten* (D)	No Opp.	88.2	3,209
2	David R. Bowen* (D)	81.9	66.1	60,735
	Ben F. Hilburn (R)	No Opp.	27.7	27,000
3	G. V. Montgomery* (D)	No Opp.	No Opp.	0
4	Thad Cochran* (R)	98.5	70.2	83,884
	Kenneth L. Dean (D) **	50.9	28.8	11,360
5	Trent Lott* (R)	No Opp.	73.0	31,464
	Walter W. Murphey (D)	50.1	14.4	2,163
	MISSOURI			
1	William Clay* (D)	67.8	68.3	43,810
	Arthur Martin (R)	53.9	31.7	1,881

2	James W. Symington* (D)	71.6	61.0	74,762
	Howard C. Ohlendorf (R)	No Opp.	39.0	43,330
3	Leonor K. Sullivan* (D)	89.5	74.3	27,800
	Jo Ann P. Raisch (R)	67.4	24.3	2,254
4	William J. Randall* (D)	86.7	67.9	19,596
	Claude Patterson (R)	No Opp.	32.1	12,771
5	Richard Bolling* (D)	86.6	69.1	20,590
	John J. McDonough (R)	55.3	29.9	9,247
6	Jerry Litton* (D)	No Opp.	78.9	52,896
	Grover Speers (R)	No Opp.	21.1	745

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Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Expenditures	A
	MISSOURI Cont'd				
7	Gene Taylor* (R)	76.0	52.3	$ 96,782	
	Richard L. Franks (D)	70.4	47.7	94,173	
8	Richard H. Ichord* (D)	84.6	69.9	50,156	
	James A. Noland, Jr. (R)	No Opp.	30.1	195	

9	William L. Hungate* (D)	No Opp.	66.4	30,091	
	Milton Bischof, Jr. (R)	No Opp.	33.6	13,369	
10	Bill D. Burlison* (D)	80.1	72.8	28,021	
	Truman Farrow (R)	59.6	27.2	2,063	
	MONTANA				
1	Max S. Baucus (D)	43.6	54.8	111,096	
	Richard G. Shoup* (R)	No Opp.	45.2	101,118	
2	John Melcher* (D)	No Opp.	63.0	57,016	
	John K. McDonald (R)	63.6	37.0	32,341	
	NEBRASKA				
1	Charles Thone* (R)	No Opp.	53.3	98,307	
	Hess Dyas (D)	No Opp.	46.7	133,261	
2	John Y. McCollister* (R)	No Opp.	55.2	92,834	
	Daniel C. Lvnch (D)	64.2	44.8	87,691	
3	*Virginia Smith (R)*	*21.7*	*50.2*	*102,820*	
	Wayne W. Ziebarth (D)	*68.9*	*49.8*	*90,123*	
	NEVADA				
1	James Santini (D)	53.8	55.8	122,199	144,366
	David Towell* (R)	87.1	36.4	111,697	

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	NEW HAMPSHIRE				
1	*Norman E. D'Amours (D)*	*49.8*	*52.1*	*75,128*	
	David A. Banks (R)	*39.5*	*47.9*	*108,163*	
2	James C. Cleveland* (R)	86.1	64.2	27,102	
	Helen L. Bliss (D)	56.5	35.8	15,835	
	NEW JERSEY				
1	James J. Florio (D)	82.8	57.5	97,679	
	John E. Hunt* (R)	No Opp.	38.5	57,787	
2	William J. Hughes (D)	54.7	57.3	119,864	
	Charles W. Sandman, Jr.* (R)	No Opp.	41.3	98,734	
3	James J. Howard* (D)	No Opp.	68.9	52,474	
	Kenneth W. Clark (R)	No Opp.	29.8	15,231	
4	Frank W. Thompson* (D)	64.9	66.8	44,542	
	Henry J. Keller (R)	No Opp.	33.2	11,891	

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Cong. Dist	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Expenditures
	NEW JERSEY Cont'd			
5	*Millicent Fenwick (R)*	*47.9*	*53.4*	*$131,861*
	Frederick Bohen (D)	*57.4*	*43.5*	*117,033*
6	Edwin B. Forsythe* (R)	93.3	52.5	46,521
	Charles B. Yates (D)	34.0	45.5	66,501
7	Andrew Maguire (D)	50.9	49.7	137,280
	William B. Widnall* (R)	63.4	44.4	49,575
	Milton Gralla (Ind)		5.9	26,404
8	Robert A. Roe* (D)	92.7	73.9	36,496
	Herman Schmidt (R)	No Opp.	24.6	415
9	Henry Helstoski* (D)	91.4	64.5	35,192
	Harold A. Pareti (R)	No Opp.	32.9	23,813
10	Peter W. Rodino, Jr.* (D)	89.0	81.0	26,286
	John R. Taliaferro (R)	No Opp.	15.2	0
11	Joseph G. Minish* (D)	No Opp.	69.2	47,606
	William B. Grant (R)	No Opp.	29.4	29,292
12	Matthew J. Rinaldo* (R)	92.6	65.0	128,915
	Adam K. Levin (D)	82.4	32.4	143,895
13	Helen S. Meyner (D)	47.2	57.3	129,289
	Joseph J. Maraziti* (R)	No Opp.	42.7	68,838
14	Dominick V. Daniels* (D)	94.3	79.9	80,556
	Claire J. Sheridan (R)	73.8	16.1	0
15	Edward J. Patten* (D)	No Opp.	71.0	38,113
	E. J. Hammesfahr (R)	No Opp.	27.5	11,165
	NEW MEXICO			
1	Manuel Lujan,Jr.* (R)	No Opp.	58.6	150,825
	R. A. Mondragon (D)	No Opp.	39.7	113,847
2	Harold Runnels* (D)	No Opp.	66.7	59,733
	Donald W. Trubey (R)	No Opp.	31.9	22,131
	NEW YORK			
1	Otis G. Pike* (D)	No Opp.	65.0	26,907
	Donald R. Sallah (R)	No Opp.	28.6	4,999

2	Thomas J. Downey (D)	No Opp.	48.8	44,423	
	James R. Grover, Jr.* (R)	No Opp.	44.7	11,258	
3	Jerome A. Ambro, Jr. (D)	No Opp.	51.8	77,140	
	Angelo D. Roncallo* (R)	No Opp.	46.1	68,716	
4	Norman F. Lent* (R)	No Opp.	53.6	53,568	
	Franklin Ornstein (D)	No Opp.	46.4	70,256	

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Expenditures	A
	NEW YORK Cont'd				
5	John Wydler* (R)	No Opp.	54.2	68,115	
	Allard K. Lowenstein (D)	No Opp.	45.8	112,369	
6	Lester L. Wolff* (D)	No Opp.	66.7	54,012	
	Edythe Layne (R)	No Opp.	33.3	17,919	
7	Joseph P. Addabo* (D)	No Opp.	No Opp.	19,841	
8	B. S. Rosenthal* (D)	No Opp.	79.0	14,100	
	Albert Lemishow (R)	No Opp.	21.0	880	
9	James J. Delaney* (D)	No Opp	93.0	29,698	
10	Mario Biaggi* (D)	No Opp.	82.4	16,524	
11	*James H. Scheuer (D)*	*53.4*	*72.2*	*301,135*	
	E. G. Desborough (R)	*No Opp.*	*14.2*	*809*	
12	Shirley Chisholm* (D)	69.4	80.2	8,947	
	Francis J. Voyticky (R)	No Opp.	13.9	-0-	
13	*Stephen J. Solarz (D)*	*43.8*	*81.8*	*67,334*	
	Jack N. Dobosh (R)	*No Opp.*	*18.2*	*623*	
14	*F. W. Richmond (D)*	*42.1*	*71.3*	*245,533*	
	Michael Carbajal, Jr(R)	*No Opp*	*11.5*	*1,000*	
	Donald Elliott (Lib)	*27.1 (l)*	*13.5*	*85,680*	
15	*Leo C. Zeferetti (D)*	*50.1*	*58.4*	*53,775*	
	Austen Canade (R)	*No Opp.*	*37.9*	*39,133*	
16	Elizabeth Holtzman* (D)	No Opp.	78.9	31,746	
	Joseph Gentilli (R)	No Opp.	21.1	1,249	
17	John M. Murphy* (D)	51.1	57.7	75,272	98,757
	Frank J. Biondolillo (R)	No Opp.	25.6	6,760	

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Expenditures	A
	NEW YORK Cont'd				
18	Edward I. Koch* (D)	No Opp.	76.7	57,530	
	John Boogaerts, Jr. (R)	No Opp.	18.8	14,156	
19	Charles B. Rangel* (D)	No Opp.	96.9	15,536	
20	Bella S. Abzug* (D)	No Opp.	78.7	12,655	
	Stephen Posner (R)	No Opp.	15.6	224	
21	Herman Badillo* (D)	No Opp.	96.7	7,476	
22	Jonathan B. Bingham* (D)	No Opp.	85.1	6,545	
	Robert Black (R)	No Opp.	9.0	-0-	
23	Peter A. Peyser* (R)	78.4	57.6	73,506	
	W. S. Greenawalt (D)	No Opp.	42.4	53,111	
24	*Richard L. Ottinger (D)*	*No Opp.*	*57.8*	*120,896*	
	C. J. Stephens (R)	*No Opp.*	*42.2*	*60,458*	
	(1)Primary results are for Democratic primary in which Elliott lost to Richmond.				
27	*Matthew F. McHugh (D)*	*50.0*	*52.8*	*56,361*	
	Alfred J. Libous (R)	*43.9*	*43.1*	*62,196*	
	Franklin B. Resseguie (CON)		*4.1*	*31,904*	
28	Samuel S. Stratton* (D)	89.7	80.6	26,618	
	Wayne E. Wagner (R)	61.5	17.3	12,232	
29	Edward W. Pattison (D)	43.0	54.5	36,227	
	Carleton J. King* (R)	59.8	45.5	35,962	
30	Robert C. McEwen* (R)	No Opp.	55.0	15,710	
	Roger W. Tubby (D)	No Opp.	45.0	25,944	

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31	Donald J. Mitchell* (R)	No Opp	59.6	71,642
	Donald J. Reile (D)	51.8	37.7	30,820
32	James M. Hanley* (D)	No Opp.	59.1	70,820
	William E. Bush (R)	No Opp.	40.9	24,942
33	William F. Walsh * (R)	No Opp.	65.3	39,085
	Robert H. Bockman (D)	No Opp.	30.2	4,857 18,829
34	Frank Horton* (R)	No Opp.	67.5	68,207
	Irene Gossin (D)	No Opp.	29.0	26,379
35	Barber B. Conable, Jr.* (R)	No Opp.	56.8	75,157
	Margaret Costanza (D)	46.8	39.6	79,560
36	*John J. La Falce (D)*	*69.2*	*59.6*	*65,761*
	Russell A. Rourke (R)	*No Opp.*	*40.4*	*95,249*
37	*Henry J. Nowak (D)*	*No Opp.*	*75.0*	*14,841*
	Joseph R. Bala (R)	*No Opp.*	*24.6*	*22,118*
38	Jack F. Kemp* (R)	No Opp.	72.1	111,609
	Barbara C. Wicks (D)	No Opp.	27.9	11,038
39	James F. Hastings* (R)	No Opp.	60.2	39,974
	W. L. Parment (D)	No Opp.	37.1	7,857

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	NORTH CAROLINA			
1	Walter B. Jones* (D)	90.0	77.5	14,958
	Harry McMullan (R)	No Opp.	22.5	23,729
2	L. H. Fountain* (D)	No Opp.	No Opp.	923
3	David N. Henderson* (D)	No Opp.	No Opp.	560

[00051]

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Expenditures
	NORTH CAROLINA Cont'd			
4	Ike F. Andrews* (D)	63.7	64.7	111,307
	Ward Purrington (R)	No Opp.	34.6	95,418
5	Stephen L. Neal (D)	83.4	52.0	61,107
	Wilmer Mizell* (R)	No Opp.	47.6	62,930
6	Richardson Preyer* (D)	No Opp.	63.7	66,534
	R. S. Ritchie (R)	No Opp.	35.9	85,604
7	Charles G. Rose III* (D)	60.4	No Opp.	39,315

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8	W. G. Hefner (D)	No Opp.	57.0	71,793
	Earl B. Ruth* (R)	No Opp.	43.0	35,603
9	James G. Martin* (R)	No Opp.	54.4	128,937
	Milton Short (D)	53.4	44.1	54,071
10	James T. Broyhill* (R)	No Opp.	54.4	78,850
	Jack L. Rhyne (D)	72.4	45.6	19,607
11	Roy A. Taylor* (D)	No Opp.	66.0	18,796
	Albert F. Gilman (R)	No Opp.	34.0	5,999
	NORTH DAKOTA			
1	Mark Andrews* (R)	78.4	55.7	86,855
	Byron Dorgan (D)	No Opp.	44.3	50,990
	OHIO			
1	Willis D. Gradison, Jr. (R)	52.1	50.9	126,407
	Thomas Luken* (D)	No Opp.	49.1	79,500
2	Donald D. Clancy* (R)	No Opp.	53.4	33,369
	E. W. Wolterman (D)	50.4	46.6	13,089
3	Charles W. Whalen,Jr.* (R)	No Opp.	No Opp.	2,545

4	Tennyson Guyer* (R)	No Opp.	61.5	26,471
	J. L. Gehrlich (D)	54.0	38.5	8,704
5	Delbert L. Latta* (R)	No Opp.	62.5	26,183
	Bruce Edwards (D)	No Opp.	37.5	7,790
6	William H. Harsha* (R)	No Opp.	68.2	14,306
	Lloyd A. Wood (D)	No Opp.	31.2	9,085
7	Clarence J. Brown Jr.* (R)	No Opp.	60.5	94,367
	Patrick L. Nelson (D)	62.7	28.7	27,676
8	*Thomas N. Kindness (R)*	*37.0*	*42.4*	*75,816*
	T. Edward Strinko (D)	*34.8*	*38.0*	*72,951*
	Don Gingerich (Ind.)		*19.6*	*36,039*
9	Thomas L. Ashley* (D)	78.9	52.8	24,409
	C. S. Finkbeiner, Jr. (R)	51.5	47.2	23,472

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Expenditures
	OHIO Cont'd			
10	Clarence E. Miller* (R)	No Opp.	70.4	20,052
	H. Kent Bumpass (D)	No Opp.	29.6	2,423
11	J. William Stanton* (R)	No Opp.	60.5	25,834
	Michael D. Coffey (D)	60.0	39.5	35,009
12	Samuel L. Devine* (R)	No Opp.	50.9	73,858
	Fran Ryan (D)	No Opp.	49.1	94,243
13	Charles A. Mosher* (R)	No Opp.	57.5	17,254
	Fred M. Ritenauer (D)	60.7	42.5	14,889
14	John F. Sieberling, Jr.* (D)	No Opp.	75.4	16,666
	Mark Figetakis (R)	No Opp.	24.6	13,840
15	Chalmers P. Wylie* (R)	No Opp.	61.5	61,241
	Mike McGee (D)	68.9	38.5	21,960
16	Ralph S. Regula* (R)	No Opp.	65.6	61.552
	John G. Freedom (D)	42.9	34.4	15,985

17	John M. Ashbrook* (R)	65.3	52.7	90,357
	David D. Noble (D)	No Opp.	47.3	57,646
18	Wayne L. Hays* (D)	79.5	65.6	32,285
	Ralph Romig (R)	No Opp.	34.4	2,347
19	Charles J. Carney* (D)	76.8	72.7	15,133
	James L. Ripple (R)	No Opp.	27.3	794
20	James V. Stanton* (D)	86.8	86.9	26,109
	Robert A. Frantz (R)	No Opp.	13.1	1,757
21	Louis Stokes* (D)	70.7	82.0	42,214
	Bill Mack (R)	No Opp.	18.0	-0-
22	Charles A. Vanik* (D)	89.1	78.7	649
	William J. Franz (R)	No Opp.	21.3	4,190
23	*Ronald M. Mottl (D)*	*42.7*	*34.8*	*63,671*
	George E. Mastics (R)	*66.8*	*30.5*	*78,348*
	Dennis J. Kucinich (Ind.)		*29.4*	*18,195*
	OKLAHOMA			
1	James Jones* (D)	81.4	67.9	60,686
	George A. Mizer, Jr. (R)	68.4	32.1	17,878

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Expenditures
2	*T. M. Risenhoover (D)* **	*52.0*	*59.1*	*79,791*
	Ralph F. Keen (R)	*53.8*	*40.9*	*19,395*
3	Carl Albert* (D)	81.7	No Opp.	18,034
4	Tom Steed* (D)	No Opp.	No Opp.	7,451

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Expenditures
	OKLAHOMA Cont'd			
5	John Jarman * (D)	61.0	51.7	46,295
	M.H. Edwards (R)	No Opp.	48.3	31,255
6	Glenn L. English, Jr. (D)**	56.4	53.2	78,411
	John N. Camp* (R)	58.1	44.4	53,532
	OREGON			
1	*Les AuCoin (D)*	*48.9*	*56.0*	*95,168*
	Diarmuid O'Scannlain (R)	*38.8*	*43.9*	*83,659*
2	Al Ullman* (D)	81.2	78.1	49,496
	Kenneth Brown (R)	No Opp.	21.9	629

3	*Robert Duncan (D)*	*34.4*	*70.4*	*84,124*
	John Piacentini (R)	*66.3*	*29.5*	*54,285*
4	James Weaver (D)	35.5	52.9	42,271
	John Dellenback* (R)	No Opp	47.1	52,614
	PENNSYLVANIA			
1	William A. Barrett* (D)	No Opp.	75.8	14,729
	Russell M. Nigro (R)	No Opp.	23.3	7,841
2	Robert N. C. Nix* (D)	55.7	74.0	12,122
	Jesse W. Woods, Jr. (R)	No Opp.	26.0	15,833
3	William J. Green* (D)	No Opp.	75.4	51,066
	Richard P. Colbert (R)	No Opp.	24.6	3,082
4	Joshua Eilberg* (D)	76.3	71.0	45,286
	Isadore Einhorn (R)	No Opp.	29.0	4,059
5	*Richard T. Schulze (R)*	*43.5*	*59.6*	*29,965*
	Leo D. McDermott (D)	*53.4*	*40.4*	*39,922*
6	Gus Yatron* (D)	No Opp.	74.6	42,670
	Stephen Postupack (R)	No Opp.	24.0	9,326

7	*Robert W. Edgar (D)*	*65.5*	*55.3*	*38,819*
	S. J. McEwen, Jr. (R)	*50.4*	*43.7*	*110,075*
8	Edward G. Biester, Jr.* (R)	67.1	56.3	9,660
	William B. Moyer (D)	76.3	40.9	24,343
9	E. G. Shuster* (R)	No Opp.	56.5	60,691
	Robert D. Ford (D)	51.6	43.5	32,281
10	Joseph M. McDade* (R)	No Opp.	64.9	34,512
	Thomas J. Hanlon (D)	54.4	35.1	11,146
11	Daniel J. Flood* (D)	No Opp.	74.5	40,699
	Richard A. Muzyka (R)	No Opp.	25.5	3,369

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Expenditures	A
	PENNSYLVANIA Cont'd				
12	John P. Murtha* (D)	85.2	58.1	58,192	
	Harry M. Fox (R)	69.2	41.9	42,598	
13	R. Lawrence Coughlin* (R)	No Opp.	62.5	62,677	
	Lawrence H. Curry (D)	60.0	37.5	22,039	
14	William S. Moorhead* (D)	No Opp.	77.4	23,929	
	Zachary Taylor Davis (R)	No Opp.	22.5	1,129	
15	Fred B. Rooney* (D)	No Opp	No Opp.	12,261	
16	Edwin D. Eshleman* (R)	84.0	63.5	6,996	
	Michael J. Minney (D)	No Opp.	35.0	4,507	
17	Herman T. Schneebeli* (R)	No Opp.	52.1	47,611	
	Peter C. Wambach (D)	50.3	47.9	38,899	
18	H. John Heinz III* (R)	No Opp.	72.1	89,449	
	Francis J. McArdle (D)	57.7	27.9	23,727	

19	*William F. Goodling (R)*	*39.8*	*51.4*	*42,944*	
	Arthur L. Berger (D)	*25.5*	*47.6*	*67,162*	
20	Joseph M. Gaydos* (D)	No Opp.	81.7	24,778	
	Joseph J. Anderko (R)	No Opp.	18.3	101	
21	John H. Dent* (D)	No Opp.	69.9	26,636	
	C. L. Sconing (R)	57.4	30.1	5,324	
22	Thomas E. Morgan* (D)	31.8	63.6	64,572	
	J. R. Montgomery (R)	93.4	31.7	173	
23	Albert W. Johnson* (R)	54.4	52.7	50,758	
	Yates Mast (D)	28.2	47.3	10,870	
24	Joseph P. Vigorito* (D)	68.7	58.6	16,327	
	Clement R. Scalzitti (R)	No Opp.	41.4	3,619	12,283
25	Gary A. Myers (R)	30.9	53.8	33,064	
	Frank M. Clark* (D)	56.2	46.2	88,588	
	RHODE ISLAND				
1	Fernand J. St. Germain* (D)	No Opp.	72.9	59,244	
	Ernest Barone (R)	No Opp.	27.1	3,556	

[00055]

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Expenditures	A
	SOUTH CAROLINA				
2	*Edward Beard (D)*	*51.8*	*78.2*	*20,583*	
	Vincent J. Rotondo (R)	*No Opp.*	*21.8*	*41,113*	
1	Mendel J. Davis* (D)	No Opp.	72.7	40,729	
	George B. Rast (R)	No Opp.	25.9	-0-	
2	Floyd Spence* (R)	No Opp.	56.1	167,188	
	Matthew J. Perry (D)	57.1	43.0	92,813	
	SOUTH CAROLINA Cont'd				
3	*Butler C. Derrick Jr. (D)*	*65.2*	*61.8*	*176,022*	
	Marshall J. Parker (R)	*No Opp.*	*38.2*	*105,897*	
4	James R. Mann* (D)	No Opp.	63.3	26,536	
	Robert L. Watkins (R)	No Opp.	36.7	13,994	
5	*Kenneth L. Holland (D)* **	*53.0*	*61.4*	*96,834*	
	Len Phillips (R)	*No Opp.*	*37.8*	*44,759*	

6	John W. Jenrette, Jr. (D)	No Opp.	52.0	150,887
	Edward L. Young* (R)	No Opp.	48.0	145,823
	SOUTH DAKOTA			
1	Larry Pressler (R)	51.3	55.3	58,106
	Frank E. Denholm* (D)	No Opp.	44.7	20,583 46,307
2	James Abdnor* (R)	No Opp.	67.8	66,250
	Jack M. Weiland (D)	No Opp.	32.2	58,907
	TENNESSEE			
1	James H. Quillen* (R)	No Opp.	64.2	10,683
	Lloyd Blevins (D)	No Opp	35.8	2,013
2	John J. Duncan* (R)	95.6	70.9	28,825
	Jesse James Brown (D)	65.8	29.1	-0-
3	Marilyn Lloyd (D)	(1)	51.1	44,920
	LaMar Baker* (R)	No Opp.	45.9	96,717
4	Joe L. Evins* (D)	No Opp.	99.9	4,776
5	Richard Fulton* (D)	76.2	99.8	34,502
6	Robin L. Beard* (R)	No Opp.	56.7	189,216
	Tim Schaeffer (D)	48.9	43.3	96,288

7	Ed Jones* (D)	70.7	No Opp.	74,880
8	Harold E. Ford (D)	54.7	49.9	146,940
	Dan Kuykendall* (R)	81.9	49.4	132,411
	TEXAS			
1	Wright Patman* (D)	53.4	68.6	141,936
	J. W. Farris (R)	No Opp.	31.4	111,902
2	Charles Wilson* (D)	No Opp.	No Opp.	18,405
3	James M. Collins* (R)	82.4	64.7	192,058
	Harold Collum (D)	58.9	35.3	79.372
4	Ray Roberts* (D)	No Opp.	74.9	16,337
	Dick LeTourneau (R)	No Opp.	25.1	28,765

(1) Mrs. Lloyd replaced her husband who is deceased as the nominee.

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Expenditures	A
	TEXAS Cont'd				
5	Alan Steelman* (R)	No Opp.	52.1	168,457	
	Mike McKool (D)	51.4	47.9	122,086	
6	Olin E. Teague* (D)	No Opp.	83.0	7,249	
	Carl A. Nigliazzo (R)	No Opp.	17.0	1,203	
7	Bill Archer* (R)	No Opp.	79.2	80,941	
	Jim Brady (D)	76.8	20.8	10,827	
8	Bob Eckhardt* (D)	76.3	72.2	12,841	
	Donald D. Whitefield (R)	No Opp.	27.8	10,008	
9	Jack Brooks* (D)	No Opp.	61.9	79,023	
	Coleman R. Ferguson (R)	No Opp.	38.1	12,805	
10	J. J. Pickle* (D)	67.7	80.4	180,294	
	Paul A. Weiss (R)	No Opp.	19.6	500	
11	W. R. Poage* (D)	80.5	81.6	8,606	
	Don Clements (R)	No Opp.	17.2	190	

12	Jim Wright* (D)	No Opp.	78.7	118,839	
	James S. Garvey (R)	No Opp.	21.3	65,161	
13	John Hightower (D)	64.2	57.6	124,132	
	Robert Price* (R)	No Opp.	42.4	157,697	
14	John D. Young* (D)	No Opp.	No Opp.	2,861	
15	Eligio de la Garza* (D)	No Opp.	No Opp.	1,562	
16	Richard White* (D)	No Opp.	No Opp.	11,373	
17	Omar Burleson* (D)	No Opp.	No Opp.	9,200	
18	Barbara Jordan* (D)	No Opp.	84.8	19,825	31,58
	Robbins Mitchell (R)	No Opp.	14.0	4	50
19	George Mahon* (D)	No Opp.	No Opp.	2,044	
20	Henry B. Gonzalez* (D)	No Opp.	No Opp.	8,993	
21	*Robert Krueger (D)* **	*51.5*	*52.6*	*311,953*	*358,64*
	Douglas Harlon (R)	*60.8*	*45.2*	*164,675*	
	Ed Gallion (A)		*2.2*	*3,260*	

22	Bob Casey* (D)	68.4	59.5	133,623
	Ron Paul (R)	No Opp.	28.4	16,206
23	Abraham Kazen, Jr.* (D)	71.4	No Opp.	44,737
24	Dale Milford* (D)	58.0	76.1	63,103
	Joseph Beaman, Jr. (R)	No Opp.	20.4	1,285

[00057]

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Expenditures	A
	UTAH				
1	K. Gunn McKay* (D)	No Opp.	62.6	25,611	
	Ronald Inkley (R)	52.7	31.5	10,938	
2	*Allan T. Howe (D)*	*55.8*	*49.5*	*95,540*	
	Stephen M. Harmsen (R)	*59.7*	*46.9*	*103,717*	
	VERMONT				
1	*James Jeffords (R)*	*39.5*	*52.9*	*55,883*	
	Francis Cain (D)	*42.8*	*40.0*	*47,037*	

	VIRGINIA				
1	Thomas Downing* (D)	No Opp.	99.8	2,897	
2	G. William Whitehurst* (R)	No Opp.	60.0	83,545	
	Robert R. Richards (D)	No Opp.	40.0	44,418	
3	David Satterfield III * (D)	No Opp.	88.5	4,406	
4	Robert W. Daniel Jr.* (R)	No Opp.	47.2	79,134	
	Lester E. Schlitz (D)	No Opp.	35.9	79,837	
5	W. C. Daniel* (D)	No Opp.	99.4	1,165	
6	M. Caldwell Butler* (R)	No Opp.	45.1	63,622	
	Paul J. Puckett (D)	No Opp.	27.0	25,933	
	Warren D. Saunders (A)	No Opp.	26.1	57,819	
7	J. Kenneth Robinson* (R)	No Opp.	52.6	96,443	
	George H. Gilliam (D)	No Opp.	47.1	62,839	
8	Herbert Harris (D)	52.5	57.6	101,299	80,932
	Stanford E. Parris* (R)	No Opp.	42.4	149,450	
9	William C. Wampler* (R)	No Opp.	50.9	116,944	
	Charles J. Horne (D)	No Opp.	49.1	232,341	

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Expenditures
10	Joseph L. Fisher (D)	42.2	53.6	144,751
	Joel T. Broyhill* (R)	No Opp.	45.2	248,709
	WASHINGTON			
1	Joel Pritchard* (R)	No Opp.	69.5	84,093
	Will Knedlick (D)	37.3	28.6	7,108
2	Floyd Meeds* (D)	No Opp.	59.7	65,954
	Ronald Reed (R)	63.3	38.9	14,317
3	*Don Bonker (D)*	*36.0*	*60.9*	*81,853*
	A. Ludlow Kramer (R)	*No Opp.*	*38.1*	*136,810*
4	Mike McCormack* (D)	78.4	58.9	52,217
	Floyd S. Paxton (R)	77.4	41.1	106,726
5	Thomas S. Foley* (D)	84.9	64.3	48,059
	Gary Gage (R)	64.0	35.7	12,228

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Expenditures
6	WASHINGTON Cont'd Floyd Hicks* (D)	72.3	71.8	10,357
	George M. Nalley (R)	No Opp.	28.2	8,185
7	Brock Adams* (D)	No Opp.	71.1	46,122
	Raymond Pritchard (R)	56.9	28.9	2,309
	WEST VIRGINIA			
1	Robert H. Mollohan* (D)	87.1	59.7	62,952
	Joe A. Laurita Jr. (R)	57.2	40.3	105,927
2	Harley O. Staggers* (D)	No Opp.	64.4	15,484
	William H. Loy (R)	No Opp.	35.6	30,995
3	John M. Slack, Jr.* (D)	59.6	68.5	54,008
	William L. Larcamp (R)	No Opp.	31.5	8,123
4	Ken Hechler* (D)	No Opp.	No Opp.	449
	WISCONSIN			
1	Les Aspin* (D)	No Opp.	70.5	30,443
	Leonard W. Smith (R)	No Opp.	29.5	7,629

2	Robert W. Kastenmeier* (D)	No Opp.	64.8	17,663
	Elizabeth T. Miller (R)	No Opp.	35.2	16,658
3	Alvin J. Baldus (D)	39.7	51.1	72,958
	Vernon W. Thomson* (R)	No Opp.	47.4	87,902
4	Clement J. Zablocki* (D)	No Opp.	72.5	9,852
	Lewis H. Collison (R)	No Opp.	23.8	5,986
5	Henry S. Reuss* (D)	No Opp.	80.0	2,073
	Mildred A. Morries (R)	No Opp.	20.0	459
6	William A. Steiger* (R)	No Opp.	59.5	51,495
	Nancy J. Simenz (D)	No Opp.	35.4	6,128
7	David R. Obey* (D)	No Opp.	70.5	25,807
	Josef Burger (R)	No Opp.	29.4	12,683
8	Robert J. Cornell (D)	56.6	54.4	63,736
	Harold V. Froelich* (R)	Nc Opp.	45.6	93,272
9	*Robert W. Kasten (R)*	*56.9*	*52.9*	*91,770*
	Lynn S. Adelman (D)	*59.4*	*45.0*	*104,934*
WYOMING				
1	Teno Roncalio* (D)	No Opp.	54.7	52,860
	Tom Stroock (R)	76.8	45.3	98,581

6. The following list contains the total campaign expenditures for all major party candidates and significantly financed minor party or independent candidates in the 1974 Senate races.

On the list, winning candidates are listed first. Incumbents are indicated by an asterisk (*). The races printed in italics are those in which there was no incumbent in the general election. Candidates indicated by a double asterisk (**) won their primary after a runoff election. The primary vote percentage listed for those candidates is for the runoff. *Congressional Quarterly* is the source of all data on vote percentages.

The figures in the column headed (A) are based upon additional information regarding expenditures acquired subsequent to the filing of the Conway affidavit of April 21, 1975.

These additional figures are not included in the findings in paragraphs 11-12, 23-34, 78-84, 97-99, *infra*. However, the inclusion of this additional information would not alter any of the aggregate figures in the above-stated paragraphs to a statistically significant extent.

EXPENDITURES FOR ALL NOVEMBER 1974 SENATE RACES

(The winning candidate is listed first. The contests printed in italic are those in which there was no incumbent; those printed in roman had an incumbent candidate. -- in Primary Vote % column means candidate was nominated by state convention).

Source: Common Cause Campaign Monitoring Project

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	Primary Vote %	General Election Vote %	Expenditures
ALABAMA			
James Allen (D)*	82.6	95.8	$ 37,328
ALASKA			
Mike Gravel (D)*	53.2	58.3	469,300
C.R. Lewis (R)	53.0	41.7	353,701
ARIZONA			
Barry Goldwater (R)*	No Opp.	58.3	394,042
Jonathan Marshall (D)	53.7	41.7	129,260
ARKANSAS			
Dale Bumpers (D)	*65.2*	*84.9*	*335,874*
John Jones (R)	*No Opp.*	*15.1*	*18,651*
CALIFORNIA			
Alan Cranston (D)*	83.4	60.5	1,336,202
H.L. (Bill) Richardson (R)	64.5	36.2	702,767
COLORADO			
Gary Hart (D)	39.3	57.2	352,557
Peter Dominick (R)*	No Opp.	39.5	502,343
CONNECTICUT			
Abraham Ribicoff (D)*	--	63.7	435,985
James H. Brannen (R)	--	34.3	66,162
FLORIDA			
Richard Stone (D) **	*51.0*	*43.4*	*913,787*
Jack Eckerd (R)	*67.3*	*40.9*	*421,169*
John Grady (A)		*15.7*	*145,495*
GEORGIA			
Herman Talmadge (D)*	81.2	71.7	65,207
Jerry Johnson (R)	No Opp.	28.2	12,856

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HAWAII			
Daniel Inouye (D)*	No opp.	82.9	205,265

* Indicates Incumbent
** Indicates Primary Runoff Winner

[00061]

Source: Common Cause Campaign Monitoring Project

	Primary Vote %	General Election Vote %	Expenditures
IDAHO			
Frank Church (D)*	85.6	56.1	$ 300,300
Robert Smith (R)	72.0	42.1	127,926
ILLINOIS			
Adlai E. Stevenson III (D)*	82.6	62.2	757,329
George M. Burditt (R)	82.7	37.2	488,556
INDIANA			
Birch Bayh (D)*	--	50.7	1,024,486
Richard G. Lugar (R)	--	46.4	619,678 (1)
Don L. Lee (A)		2.8	19,194
IOWA			
John Culver (D)	*No Opp.*	*52.0*	*470,970*
David Stanley (R)	*66.6*	*47.3*	*336,067*
KANSAS			
Robert Dole (R)*	No Opp.	50.9	1,110,024
William R. Roy (D)	84.7	49.1	836,927
KENTUCKY			
Wendell H. Ford (D)	84.9	53.5	1,006,670
Marlow Cook (R)*	87.1	44.1	524,569
LOUISIANA			
Russell Long (D)*	74.5	No Opp.	498,774
MARYLAND			
Charles Mathias (R)	75.7	57.3	329,845
Barbara Mikulski (D)	40.4	42.7	74,311
MISSOURI			
Thomas F. Eagleton (D)*	87.3	60.1	647,143
Thomas Curtis (R)	81.8	39.3	362,804
NEVADA			
Paul Laxalt (R)	*81.3*	*47.0*	*385,861*
Harry Reid (D)	*59.9*	*46.6*	*410,553*

NEW HAMPSHIRE			
John H. Durkin (D)	*50.0*	*49.7*	*128,389*
Louis Wyman (R)	*83.2*	*49.7*	*138,605*
NEW YORK			
Jacob K. Javits (R)*	No Opp.	45.3	1,090,437
Ramsey Clark (D)	47.8	38.2	855,576
Barbara A. Keating (C)		15.9	192,462
NORTH CAROLINA			
Robert B. Morgan (D)	*50.6*	*62.1*	*781,201*
William E. Stevens (R)	*65.5*	*37.0*	*385,527*

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(1) According to Lugar, the Indiana Republican State Central Committee expended an additional $418,000 on behalf of the Lugar for U. S. Senate Committee.

[00062]

Source: Common Cause Campaign Monitoring Project

	Primary Vote %	General Election Vote %	Expenditures
NORTH DAKOTA			
Milton Young (R)*	No Opp.	48.4	$ 300,121
William Guy (D)	82.9	48.3	115,561
James R. Jungroth (IND)		2.9	13,187
OHIO			
John H. Glenn (D)	*54.5*	*64.6*	*1,149,130*
Ralph Perk (R)	*63.7*	*30.7*	*292,838*
OKLAHOMA			
Henry Bellmon (R)*	86.9	49.4	622,480
Ed Edmondson (D)	58.5	48.9	195,429
OREGON			
Robert Packwood (R)*	No Opp.	54.9	333,004
Betty Roberts (D)	--	44.2	80,193
PENNSYLVANIA			
Richard S. Schweiker (R)*	No Opp.	53.0	799,499
Peter Flaherty (D)	46.1	45.9	256,483

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SOUTH CAROLINA			
Ernest F. Hollings (D) *	No Opp.	69.5	227,835
Gwenyfred Bush (R)	No Opp.	28.6	6,754
SOUTH DAKOTA			
George McGovern (D)*	No Opp.	53.0	1,172,831
Leo K. Thorsness (R)	52.2	47.0	528,817
UTAH			
E.J. Garn (R)	--	*50.0*	*363,162*
Wayne Owens (D)	--	*44.1*	*445,500*
VERMONT			
Patrick Leahy (D)	*76.3*	*49.5*	*152,817*
Richard Mallary (R)	*59.7*	*46.4*	*90,617*
WASHINGTON			
Warren Magnuson (D)*	92.5	60.7	463,116
Jack Metcalf (R)	59.9	36.1	63,153
WISCONSIN			
Gaylord Nelson (D) *	No Opp.	61.8	247,551
Thomas Petri (R)	84.8	35.8	80,590

Supreme Court, U. S.
FILED
SEP 30 1975
DAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

Nos. 75-436 and 75-437

JAMES L. BUCKLEY, *et al.*,

Appellants,

v.

FRANCIS R. VALEO, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JOINT APPENDIX (VOL. II - Part B)
DISTRICT COURT FINDINGS

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7. The following list contains the total campaign expenditure figures for all minor party and independent candidates in the 1974 general election.

Dashes (--) in the expenditure column indicate that Common Cause was unable to locate reports for the candidate. *Congressional Quarterly* is the source of all data on vote percentage and the following list of political party abbreviations.

Abbreviations for Party Designations

A	– American
AH	– American Heritage
AIP	– American Independent
ALI	– Alaskan Independence
C	– Conservative
COM	– Communist
COU	– Courage
CST	– Constitutional
D	– Democratic
EJ	– Economic Justice
FL	– Free Liberation
F&L	– Freedom & Liberty
GWP	– George Wallace Party
HR	– Human Rights
IA	– Independent American
IG	– Industrial Government
IGWT	– In God We Trust for Purified Leaders
IND	– Independent
IV	– Independent Voters
IVP	– Independent Vermonters Party
L	– Liberal
LIB	– Libertarian
LLJ	– Life, Liberty, Justice
LP	– Labor Party
LRU	– La Raza Unida
LU	– Liberty Union
MIP	– Maine Independent Party
NDPA	– National Democratic Party of Alabama
P	– Prohibition
PCD	– Public Congress of Delaware
PFP	– Peace and Freedom
PP	– Peoples Party
R	– Republican
SL	– Socialist Labor
SW	– Socialist Workers
USLP	– United States Labor Party
W	– Workers

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[00064]

1974 SENATE MINOR PARTY AND INDEPENDENT CANDIDATES

	General Election Vote %	Expenditures
ALABAMA		
Alvin Abercrombie (P)	4.2	1,428
CALIFORNIA		
Jack McCoy (AIP)	1.7	2,687
Gayle M. Justice (PFP)	1.6	850
COLORADO		
Fred Hyskell (P)	1.0	--
John M. King (IND)	2.0	42,181
Henry John Olshaw (IA)	.2	--
CONNECTICUT		
A.F. Capozzi,Jr. (GWP)	1.8	325
Norman L. Rochon (A)	.2	--
FLORIDA		
John Grady (A)	15.7	148,495
HAWAII		
James D. Kimmel (PP)	17.1	--

IDAHO		
Jean L. Stoddard (A)	1.8	--
ILLINOIS		
Edward T. Heisler (SW)	.4	0
Ishmael Flory (COM)	.2	13,318
INDIANA		
Don L. Lee (AIP)	2.8	19,194
IOWA		
Lorin E. Oxley (A)	.7	462
KENTUCKY		
William E. Parker (AP)	2.4	0
MISSOURI		
Clifford E. Talmadge (IND)	.7	0
NEVADA		
Jack C. Doyle (IA)	6.4	--
NEW HAMPSHIRE		
Carmen Chimento (A)	.7	2,674
NEW YORK		
Barbara A. Keating (CON)	15.9	192,462
Robert E. Massi (SL)	.1	--
W.F. Dowling (COU)	.1	--
Mildred Edelman (COM)	.1	--
Elijah C. Boyd (LP)	.1	950
Rebecca Finch (SW)	.2	1,690

[00065]

Cong. Dist.		General Election Vote %	Expenditures
CALIFORNIA			
34	John D. Donohue (PFP)	1.9	0
	James Manis (AIP)	2.0	1,321
36	William E. Pasley (AIP)	5.1	1,450
37	John O. Ortman (AIP)	3.9	1,214
38	Lee R. Rayburn (AIP)	3.2	550
	Larry B. Kallenberger (PFP)	1.5	--
39	Pat P. Scalera (AIP)	4.4	1,037

40	Grayson L. Watkins (AIP)	5.7	1,241
41	Robert W. Franson (AIP)	2.5	744
	COLORADO		
1	Elmer B. Sachs (AH)	0.7	735
5	Stan Johnson (IND)	3.8	810
	CONNECTICUT		
1	Charlie A. Burke (GWP)	1.4	100
2	Anthony Discepolo (IND)	1.8	1,878
3	Joelle R. Fishman (COM)	1.3	3,846
	Peter Koltypin (GWP)	2.1	2,749
4	Alan B. Fodeman (GWP)	1.6	765
5	Virginia A. Knauf (GWP)	1.6	0
6	Louis J. Marietta (IND)	0.4	0

[00066]

Cong. Dist.		General Election Vote %	Expenditures
	DELAWARE		
1	Donald Gries (A)	0.8	772
	George C. Brown (P)	0.2	31
	John Trager (PCD)	0.8	3,909
	Melvin Dillard (USLP)	0.1	21
	FLORIDA		
5	Glenn W. Turner (IND)	2.5	22,962
	ILLINOIS		
1	Willie Mae Reid (SW)	0.8	0
15	K. Douglas Lassiter (IND)	2.4	1,256

16	W. John Schade (IND)	15.8	9,471
	INDIANA		
4	Donald E. Harris (AIP)	1.6	697
7	Harold P. Schlechtweg (SW)	0.8	0
	IOWA		
2	James W. Whitford (A)	0.8	151
4	Donna Le Porte (A)	0.6	26
	KANSAS		
1	Lorin P. Miller (P)	1.1	--
	Thelma Morgan (A)	7.5	13,642
2	David Scoggin (P)	1.1	--
3	Ted E. Oakes (A)	2.1	--
4	John S. Stevens (A)	8.7	2,922

	KENTUCKY		
1	Robert W. Yoak (A)	3.1	276
2	Leland Neville (A)	3.3	782
3	William P. Chambers (A)	3.1	117
	Luther J. Wilson (IND)	0.7	73
5	Albert G.J. Cullum (A)	2.5	2,557
6	Fred Kerestesy (A)	3.9	100

[00067]

Cong. Dist.		General Election Vote %	Expenditures
	LOUISIANA		
2	Jules W. Hillery (IND)	3.5	100
7	Jeremy J. Millett (IND)	10.7	1,618
	MASSACHUSETTS		
3	Douglas J. Rowe (IND)	12.0	69,267

4	John Rotenberg (IND)	34.7	76,576
7	James J. Murphy (IND)	20.2	187
8	James Kiggen (USLP)	6.9	292
	Laura Ross (COM)	5.3	3,827
9	L.R. Sherman (USLP)	10.7	42
	MICHIGAN		
1	Jacqueline M. Cotton (USLP)	0.2	30
	Hattie L. McCutcheon (SW)	0.4	--
2	Roy S. Jones (AIP)	0.7	--
	Philip S. Carroll (HR)	1.3	47
	Ronald G. Zeigler (USLP)	0.1	185
	Martha E. Pettit (SW)	0.1	--
3	Marvin P. Lightvoet (AIP)	0.7	50
	Bryce F. Zender (HR)	0.6	--
	Steve Beumer (SW)	0.1	--
4	Leslie E. Craine (SW)	0.1	--
	Harold Snyder (AIP)	1.3	110

5	Dwight W. Johnson (AIP)	3.7	11,255
	R. Frank Girard (SL)	0.2	0
	Ann Riley Owens (SW)	0.1	--
6	Howard Jones (HR)	1.4	1,333
	Michael Ballard (SL)	0.1	0
	Margaret M. Hayes (SW)	0.2	--
	R.A. Weder (USLP)	0.1	0
7	Jimmy L. Sabin (AIP)	1.0	1,208
	John P. Freeman (HR)	0.8	0
	John F. Dicks (USLP)	0.1	0
	Sheila Ostrow (SW)	0.1	--

[00068]

Cong. Dist.		General Election Vote %	Expenditures
	MICHIGAN		
8	Nicolee E. Brorsen (SW)	0.1	--
	Mark Nelson (AIP)	1.7	9,307
9	Craig R. Kessler (AIP)	1.1	2,574
	Connie Allen (SW)	0.2	--

10	Kathryn Ropers (SW)	0.4	--
11	Brian Elam (SW)	0.0	--
	Theodore G. Albert (HR)	0.2	300
12	Richard Orawiec (SW)	0.2	--
13	Judith Hagans (SW)	1.1	--
	Percy R. Wheeler (USLP)	0.4	--
14	Joseph A. Spaniolo (USLP)	0.1	0
	Mark Severs (SW)	0.2	--
	Leonard J. Lukomski (AIP)	1.3	10
15	James R. Eades (USLP)	0.1	--
	Claytee Artz (SW)	0.1	--
	Aldi C. Fuhrmann (AIP)	0.9	--
16	Donald A. Bechler (SW)	0.3	--
	Lewis Steinhardt (USLP)	0.2	--
	Virginia Crawford (AIP)	1.3	563
17	Bruce E. Duke (AIP)	0.8	55
	Harry Jock (USLP)	0.1	0
	Christy Wallace (SW)	0.3	--

18	James G. Lott (AIP)	0.4	0
	Matthew Moriarty (USLP)	0.1	0
	Sandra L. Peck (SW)	0.2	--
	Maurice Geary (HR)	0.4	37
19	James Jaber (USLP)	0.1	15
	Rudolph Zeller (SW)	0.1	--
	MINNESOTA		
5	Edmund A. Jurenas (SW)	1.5	260
8	Robert C. Bester (IV)	1.8	150
	William R. Ojala (EJ)	10.0	3,833
	MISSISSIPPI		
1	Jack Benney (IND)	11.8	1,865
2	H.B. Wells (IND)	6.2	3,824

	General Election Vote %	Expenditures
NORTH CAROLINA		
Henry R. Nesmith (USLP)	.9	0
NORTH DAKOTA		
James R. Jungroth (IND)	2.9	13,187
K.C. Gardner, Jr. (F&L)	.4	--
OHIO		
K.G. Harroff (IND)	2.6	7,978
Richard B. Kay (IND)	2.1	3,944
OKLAHOMA		
Paul Edward Trent (IND)	1.7	310
PENNSYLVANIA		
G.W. Shankey, Jr. (CST)	1.1	4,310
SOUTH CAROLINA		
Harold Hough (IND)	1.9	--

UTAH			
	Bruce Bangerter (A)	5.9	1,488
VERMONT			
	Bernard Sanders (LU)	4.1	--
WASHINGTON			
	Eugene Goosman (AIP)	2.0	--
	Clare Fraenzl (SW)	.8	--
	Patrick Ruckert (USLP)	.4	793
WISCONSIN			
	Roman Blenski (IND)	.04	--
	Gerald L. McFarren (A)	2.0	--

1974 HOUSE MINOR PARTY AND INDEPENDENT CANDIDATES

Cong. Dist.		General Election Vote %	Expenditures
	ALABAMA		
1	Mary B. McCarthy (NDPA)	3.6	--

3	James R. Connell (P)	4.1	--
4	Malcolm S. Carpenter (P)	0.2	--
6	Richard Boone (NDPA)	0.7	--
	Elizabeth S. Dillard (P)	1.7	--
7	Frank P. Walls (C)	6.4	--
	Lewis Black (NDPA)	2.6	--
	ARIZONA		
1	J.M. Sanders (LLJ)	6.6	2,632
	CALIFORNIA		
1	Dorothy D. Paradis (AIP)	14.2	1,447
2	Carole J. Glass (PFP)	4.3	65
5	Raymond Broshears (PFP)	2.7	650
6	Emily L. Siegel (PFP)	4.0	20
	Carl R. Davis (AIP)	2.9	0
8	John Holland (AIP)	3.8	410

11	N.W. Kudrovzeff (AIP)	2.9	1,385
13	Elizabeth C. Barton (PFP)	2.6	612
	Floyd S. Stancliffe (AIP)	2.5	157
14	Roger A. Blain (AIP)	4.9	3,696
16	D.J. Mauro (AIP)	3.0	1,665
24	David E. Davis (AIP)	3.0	145
27	Jerry Rubin (PFP)	3.6	0
31	William C. Taylor (PFP)	2.7	577
32	Virgil V. Badalich (AIP)	9.2	1,648
	Frank H. Walker (PFP)	3.1	0
33	James C. Griffin (AIP)	3.5	2,348

Cong. Dist.		General Election Vote %	Expenditures
	MISSISSIPPI		
	Leonard R. Young (IND)	1.0	--
5	Karl Mertz (IND)	8.9	3,180
	Glenn E. Gilley (IND)	2.7	2,251
	Ernest Creel (IND)	1.0	359
	MISSOURI		
3	Marie S. Nowak (IND)	1.4	2,743
5	Edward Verburg (IND)	1.0	192
	NEVADA		
1	Joel F. Hansen (IA)	7.8	6,019
	NEW JERSEY		
1	Elizabeth L. Dreys (IND)	0.5	1,322
	Bradley S. Kirsch (IND)	0.6	2,426
	Raymond Carotenuto (IND)	0.3	850
	James Perry (IND)	2.3	1,588
	Julius Levin (SL)	0.2	0
	Pedro J. Torres (LP)	0.1	--
2	Andrew Wenger (IND)	1.4	521
3	Joseph A. Rogers (IND)	0.8	1,083
	Thomas W. Palven (IND)	0.5	0
5	John Giammarco (AIP)	2.0	0
	Leonard F. Newton (IND)	1.2	7,614
6	B.S. Dogianero (SL)	0.7	0
	John V. Mahalchik (IND)	0.9	0
	Joseph A. Nowak (IND)	0.4	--
7	Milton Gralla (IND)	5.9	25,000
8	Kenneth Kowalczyk (SL)	1.6	--
9	Robert W. Funsch (IND)	0.3	513
	Herbert H. Shaw (IND)	2.2	104

10	Sandra Hill (IND)	3.8	0
11	Robert Clement (SL)	1.3	0

[00072]

Cong. Dist.		General Election Vote %	Expenditures
	NEW JERSEY		
12	Anthony Carbone (IND)	1.1	0
	C. O'Toole French (IND)	0.8	932
	Robert A. Steiner (IND)	0.7	2,660
14	John A. Alston (IND)	4.0	3,821
15	Paul M. Schiff (COM)	1.5	936
	NEW MEXICO		
1	Martin Malloy (AIP)	1.7	0
2	H.D. Horton (AIP)	1.4	227
	NEW YORK		
1	Seth C. Morgan (C)	6.4	4,114

2	Neil Greene (C)	6.5	275
3	Arthur Hoffer (L)	2.2	2,847
9	Theodore E. Garrison (L)	7.0	1,846
10	Francis L. McHugh (C)	11.2	3,381
	John P. Hagan (L)	6.3	0
11	Christopher Acer (C)	8.3	865
	Tibby Blum (L)	5.2	--
12	Teresa Delgado (W)	0.9	1,348
	Martin Shepherd (C)	4.6	--
	Maxine Williams (SW)	0.4	0
14	Donald H. Elliott (L)	13.3	85,680
	Helen Halyard (W)	0.8	1,348
	A.W. Nojovits (C)	3.1	0
15	Herbert M. Feinsod (L)	3.7	--
17	Jerome Kretchmer (L)	9.6	50,964
	Michael Ajello (C)	7.1	588

18	G.M. Drummond (C)	3.7	642
	C. Sojourner (SW)	0.8	0
19	Charles G. Mills (C)	3.1	176
20	Timothy A. Mitchell (C)	4.9	4,376
	Christina Nelson (LP)	0.4	788
	Claire Moriarity (SW)	0.4	0
21	Mary C. Lynch (C)	3.3	0

[00073]

Cong. Dist.		General Election Vote %	Expenditures
	NEW YORK		
22	John Digiovanni (C)	5.9	0
25	Sanford Cohen (FL)	1.2	19,201
26	Thomas Moore (C)	7.5	1,103
27	Franklin B. Resseguie (C)	4.1	31,904
28	E.A. Breitenbach (C)	2.1	1,583
31	Theodore L. Tolles (L)	2.7	46,099
33	Bessie C. Noble (L)	1.2	162
	F.H. Aspinwall (C)	3.3	461
34	J. Warren McGee (C)	2.8	230
	Virginia Tadio (L)	0.7	0
35	David L. MacAdam (L)	0.7	0
	C.E. Carman (C)	2.9	1,743
37	Ira Liebowitz (LP)	0.5	--
39	Joseph V. Damiano (C)	2.6	1,194
	NORTH CAROLINA		
4	M.H. Smedberg (USLP)	0.7	965
5	L.E. Brubaker (USLP)	0.3	965
6	Harry A. Fripp (USLP)	0.4	965
9	G.M. Hooks (USLP)	1.6	965

Cong Dist.		General Election Vote %	Expenditures
	OHIO		
7	Dorothy Franke (IND)	10.8	2,653
8	Don Gingerich (IND)	20.3	36,039
23	Arthur Cain (IND)	1.3	610
	Hugh J. Gallagher (IND)	2.3	4,841
	Bohdan A. Futey (IND)	1.7	7,618
	Dennis J. Kucinich (IND)	29.4	18,195
	OKLAHOMA		
6	Bennett L. Basore (IND)	2.4	2,600

Cong Dist.		General Election Vote %	Expenditures
	PENNSYLVANIA		
1	Bernard Salera (LP)	0.9	1,390
6	Frank E. Huet (CST)	1.4	--
7	Ralph F. Johns (CST)	1.1	743
8	R.O. McKenney (CST)	2.8	0
16	Arlene R. Wenger (CST)	1.5	0
19	Joseph Paul (CST)	1.0	0
22	John Bove (CST)	4.7	4,131
	SOUTH CAROLINA		
1	Charles Amaker (IND)	0.8	0
	Benjamin Frasier (UCP)	0.6	1,172

2	Paul Proveaux (IND)	0.9	0
5	Bert Sumner (IND)	0.8	0
	TENNESSEE		
3	Sarah Delaney (IND)	2.2	24,120
	TEXAS		
11	Laurel N. Dunn (IND)	1.1	--
18	Kris Vasquez (SW)	1.2	0
21	Ed Gallion (A)	2.2	9,260
22	James T. Smith (A)	1.2	--
24	Earl W. Armstrong (A)	3.5	2,706
	UTAH		
1	L.S. Brown (A)	5.9	1,945

2	Karl J. Bray (LIB) Roben J. Schafer (A)	0.6 3.3	0 1,103
	VERMONT		
1	Michael Parenti (LU)	7.1	--

[00075]

Cong. Dist.		General Election Vote %	Expenditures
	VIRGINIA		
3	A.R. Ogden (IND)	10.4	0
4	Curtis W. Harris (IND)	16.9	23,450
6	Warren D. Saunders (A) Timothy A. McGay (IND)	26.1 1.8	57,819 614
10	Francis J. Speh (IND)	1.2	365
	WASHINGTON		
1	Fred Lovgren (SW) Patricia Dolbeare (USLP)	1.1 0.8	-- 205

2	Paul Roberts (USLP)	1.3	400
3	Evelyn Olafson (USLP)	1.0	245
	WISCONSIN		
3	Keith D. Ellison (A)	1.4	918
4	Herbert O. Jahnke (A)	3.8	184
6	Harvey C. LeRoy (A)	5.1	2,449
9	William D. Quirk (A)	2.1	0

[000076]

8. The following is a list of the 25 most expensive races for the House of Representatives in 1972.

Rank, State (district) and candidate	Vote percentage in general election	Total expenditures
1-Massachusetts (5):		
John Kerry (Democrat)	44.7	$279,746
Paul Cronin (Republican)	53.5	171,414
Roger Durkin (Independent)	1.8	61,952
Total		514,112
2-California (17): 1		
Paul McCloskey (Republican	54.6	321,558
James Stewart (Democrat)	35.9	109,418
James Knapp (Republican)	9.5	75,970
Total		506,946
3-Arizona (4):		

Jack Brown (Democrat)	47.0	318,254
John Conlan (Republican	53.0	154,662
Total		472,916

4-Massachusetts (12):		
William Weeks (Republican)	49.7	269,046
Gerry E. Studds (Democrat)	50.3	195,758
Total		464,804

5-Illinois (10):		
Abner Mikva (Democrat)[1]	48.4	218,543
Samuel Young (Republican)	51.6	206,166
Total		424,709

6-California (6):		
Roger Boas (Democrat)	47.9	266,760
William Mailliard (Republican)[1]	52.1	148,550
Total		415,310

[1] Incumbent.

Rank, State (district) and candidate	Vote percentage in general election	Total expenditures
7-New York (24):		
Ogden Reid (Democrat)[1]	52.5	$209,007
Carla Vergari (Republican)	47.8	190,890
Total		399,897
8-New York (14):		
Allard Lowenstein (Liberal)	28.1	285,475
John J. Rooney (Democrat)[1]	53.9	110,054
Total		395,529
9-Louisiana (3):		
Louis Watkins (Democrat)	46.0	229,767
David Treen (Republican)	54.0	155,629
Total		385,396

Rank, State (district) and candidate	Vote percentage in general election	Total expenditures
10-Massachusetts (4):		
Robert Drinan (Democrat)[1]	48.8	199,703
Martin Linsky (Republican)	45.8	148,285
John Collins (Independent-Conservative)	5.4	22,579
Total		370,567
11-Texas (13):		
Robert Price (Republican)[1]	54.8	206,171
Graham Purcell (Democrat)[1]	45.2	149,453
Total		355,624
12-New York (23):		
Richard Ottinger (Democrat)	49.6	195,784
Peter Peyser (Republican)[1]	50.4	154,567
Total		350,351

[1] Incumbent.

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[00079]

Rank, State (district) and candidate	Vote percentage in general election	Total expenditures
13-New Mexico (1):		
Manuel Lujan (Republican)[1]	55.7	$212,093
J.E. Gallegos (Democrat)	44.3	126,219
Total		338,312
14-California (8):		
Fortney Stark (Democrat)	52.9	266,684
Lew Warden (Republican)	47.1	44,499
Total		311,183
15-Georgia (5):		
Andrew Young (Democrat)	52.8	159,431
Rodney Cook (Republican)	47.2	149,616

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Total		309,047
16-Hawaii (1):		
Fred Rohlfing (Republican)	45.3	179,221
Spark Matsunaga (Democrat)[1]	54.7	127,753
Total		306,974
17-Missouri (6):		
Jerry Litton (Democrat)	54.6	188,642
Russell Sloan (Republican)	45.4	100,059
Total		288,701
18-Mississippi (5):		
Ben Stone (Democrat)	44.2	163,976
Trent Lott (Republican)	55.3	119,190
Total		283,166

[1] Incumbent.

Rank, State (district) and candidate	Vote percentage in general election	Total expenditures
19-Kansas (2):		
William Roy (Democrat)[1]	60.6	$148,995
Charles McAtee (Republican)	37.1	115,985
Total		264,980
20-California (38):		
George Brown (Democrat)	55.9	154,743
Howard Snider (Republican)	43.4	108,537
Total		263,280
21-Nevada (1):		
James Bilbray (Democrat)	47.8	179,406
David Towell (Republican)	52.2	83,106
Total		262,512

Rank, State (district) and candidate	Vote percentage in general election	Total expenditures
22-Maryland (4):		
Werner Fornos (Democrat)	40.6	145,973
Marjorie Holt (Republican)	59.4	113,513
Total		259,486
23-Tennessee (6):		
Robin Beard (Republican)	55.3	151,605
William Anderson (Democrat)[1]	43.1	105,022
Total		256,627
24-California (7):		
Ronald Dellums (Democrat)[1]	55.9	100,853
Peter Hannaford (Republican)	38.1	100,286
Frank Cortese (American Independent)	6.0	48,980
Total		250,119

[00081]

Rank, State (district) and candidate	Vote percentage in general election	Total expenditures
25-Massachusetts (9):		
John Moakley	43.2	$157,560
Howard Miller (Republican)	14.2	58,240
Louise Day Hicks (Democrat)[1]	41.1	29,686
Total		245,486

Source: Campaign finance monitoring project, copyright, by Common Cause 1973. Printed in Hearings Before the Subcommittee on Elections of the Committee on House Administration, House of Representatives, 93rd Cong., 1st Sess. (Oct.-Nov. 1973), 417-419.

[000082]

9. The following is a list of the 10 most expensive races for the Senate in 1972.

	Vote margin (percent)	Contributions: Total contributions	Contributions: Contribution ratio between candidates	Expenditures: Total expenditures	Expenditures: Expenditure ratio between candidates
Texas:					
John Tower[1] --	53.4	$2,303,355	$3.65	$2,301,870	$3.66
Barefoot Sanders ----	44.5	630,440	1.00	629,008	1.00
Michigan:					
Robert Griffin[1]	52.2	1,443,304	2.65	1,394,927	2.54
Frank Kelley -	46.7	544,009	1.00	547,819	1.00
Illinois:					
Charles Percy[1] ------	61.4	1,399,374	4.12	1,408,822	4.20
Roman Pucinski	38.6	339,402	1.00	335,482	1.00

[1] Incumbent.

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[00083]

	Vote margin (percent)	Contributions: Total contributions	Contributions: Contribution ratio between candidates	Expenditures: Total expenditures	Expenditures: Expenditure ratio between candidates
Alabama:					
John Sparkman[1] ---	63.9	703,342	.90	702,109	.92
Winton Blount	32.5	774,039	1.00	764,961	1.00
Kentucky:					
Walter Huddleston -----	51.0	653,412	1.07	658,590	1.09
Louie Nunn ---	47.6	611,013	1.00	603,649	1.00
Oklahoma:					
Dewey Bartlett	51.5	625,639	1.19	625,095	1.22
Ed Edmondson -	45.9	525,900	1.00	512,058	1.00

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North Carolina:					
Jesse Helms --	54.1	659,895	1.33	654,246	1.39
N. Galifianakis -------	45.9	496,667	1.00	470,093	1.00
Tennessee:					
Howard Baker[1]	61.8	887,817	3.70	830,769	3.40
Ray Blanton	38.2	239,699	1.00	244,653	1.00
Louisiana:					
Bennett Johnston ----	54.9	556,912	1.09	511,616	1.00
John McKeithen	23.2	394,510	1.00	394,510	1.00
Ben Toledano -	19.0	118,906		116,347	
Georgia:					
Sam Nunn -----	53.6	629,570	1.39	567,968	1.28
Fletcher Thompson ----	46.4	454,586	1.00	444,635	1.00

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Incumbent,
ource: Campaign finance monitoring project. Printed in Hearings Before the Subcommittee on Elections of the Committee on House Administration, House of epresentatives, 93rd Cong., 1st Sess. (Oct.-Nov. 1973), 422.

[000084]

10. The following chart shows the 25 most expensive House races in 1974.

[00085]

*winner
°candidate of party that last held District
+incumbent

TABLE OF TWENTY-FIVE MOST EXPENSIVE HOUSE RACES IN 1974

435

	State & District	Percentage of Vote Primary	Percentage of Vote General	Total $ Contributions	Total $ Expenditures
Ed Gallion (A)	Texas	x	2.2	9,260	9,261
Douglas S. Harlan (R)	(21)	60.8	45.2	167,441	164,675
*° Robert (Bob)Krueger(D)		31.7	52.6	295,755	358,645
					532,581
* Abner J. Mikva (D)	Illinois	x	51.3	264,650	286,225
+ Samuel H. Young (R)	(10)	x	48.7	256,513	251,249
					537,474

Nicolee E. Brorsen(SW)	Michigan	x	.1	0	0
Mark Nelson (AIP)	(8)	x	1.7	4,417	4,596
James M. Sparling,Jr.(R)		89.9	43.4	84,829	82,856
*+Jerome R. Traxler (D)		x	54.8	79,129	78,856
					161,712
Christopher Acer (C)	New York	x	8.3	865	865
Edward G. Desborough(R)	(11)	x	14.2	808	808
°James H. Scheuer (D)		53.4	72.2	305,254	301,135
					302,809
°Jeffrey LaCaze (D)	Louisiana	P.36.1	50.0	229,710	229,335
*W. Henson Moore III (R)	(6)	RU.51.6	50.0	170,735	158,971
					388,306
*Jack Hightower (D)	Texas	64.2	57.6	127,747	124,132
+Robert Price (R)	(13)	x	42.4	140,526	157,697
					281,829
+Joel T. Broyhill (R)	Virginia	Conven.	45.2	206,729	248,709
*Joseph L. Fisher (D)	(10)	42.2	53.6	144,835	144,751
					393,460
Charles Grisbaum,Jr.(D)	Louisiana	x	41.5	156,341	166,203
*+David C. Treen (R)	(3)	x	58.5	190,241	190,135
					356,338

*James D. Santini (D)	Nevada	53.8	55.8	122,855	144,366
Joel F. Hansen (IA)		x	7.8	6,618	6,019
David Towell (R)		87.1	36.4	102,609	111,697
					262,082

[00086]

TABLE OF TWENTY-FIVE MOST EXPENSIVE HOUSE RACES IN 1974

	State & District	Percentage of Vote Primary	Percentage of Vote General	Total $ Contributions	Total $ Expenditures
Charles J. Horne (D)	Virginia	Conven.	49.1	198,649	232,341
*+William C. Wampler (R)	(9)	Conven.	50.9	128,642	116,944
					349,285
*Willis D. Gradison, Jr. (R)	Ohio (1)	52.1	50.9	126,505	126,407
+Thomas A. Luken (D)		x	49.1	78,978	79,500
					205,907

	Elizabeth C. Barron (PFP)	California (13)	x	2.6	659	659
°	George W. Milias (R)		46.3	42.4	122,848	122,239
*	Norman Y. Mineta (D)		77.8	52.6	188,090	185,236
	Floyd S. Stancliffe (AIP)		x	2.5	167	167
						308,301
	Joseph D. Early (D)	Massachusetts (3)	31.8	49.5	120,756	120,534
	David J. Lionett (R)		83.2	38.4	112,806	120,978
	Douglas J. Rowe (IND)		x	12.0	61,569	69,267
						310,829
	Julian Camacho (D)	California (16)	61.7	47.8	151,622	156,084
	D.J. Mauro (AIP)		x	3.0	285	1,665
*+	Burt L. Talcott (R)		x	49.2	153,572	152,455
						310,204
+	Donald G. Brotzman (R)	Colorado (2)	x	48.1	150,253	165,911
*	Timothy E. Wirth (D)		x	51.9	130,903	134,103
						300,014
*°	Butler C. Derrick, Jr. (D)	South Carolina (3)	65.2	61.8	149,126	176,022
	Marshall J. Parker (R)		x	38.2	105,674	105,987
						282,009

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*	Robin L. Beard, Jr. (R)	Tennessee (6)	x	56.7	189,788	189,216
	Tim Schaeffer (D)		48.9	43.3	97,243	96,288
						285,504
	Val Oshel (R)	Illinois (24)	57.7	59.6	51,319	50,566
*°	Paul Simon (D)		68.4	40.4	225,123	223,163
						273,729

[00087]

TABLE OF TWENTY-FIVE MOST
EXPENSIVE HOUSE RACES IN 1974

		State & District	Percentage of Vote Primary	Percentage of Vote General	Total $ Contributions	Total $ Expenditures
	Frederick M. Bohen (D)	New Jersey (5)	57.4	43.5	105,297	117,033
*°	Millicent Fenwick (R)		47.9	53.4	132,992	131,861
	John Giammarco (AIP)		x	2.0	0	0
	Leonard F. Newton (IND)		x	1.2	6,229	7,706
						256,600
	Alan B. Fodeman (GWP)	Connecticut (4)	x		837	765
	James G. Kellis (D)		x	46.7	52,147	51,034
*+	Stewart B. McKinney (R)		x	53.3	99,930	99,177
						150,976

439

Mike McKool (D)	Texas	51.4	47.9	122,086	122,086
*+ Alan Steelman (R)	(5)	x	52.1	170,027	168,457
					290,543
Bill Clinton (D)	Arkansas	P.43.6	48.2	178,195	180,882
*+ John P. Hammer-schmidt (R)	(3)	RU.69.0	51.8	97,106	101,709
					282,591
Steve Babcock (D)	Minnesota	51.8	46.9	124,581	142,812
*° Tom Hagedorn (R)	(2)	72.8	53.1	148,284	148,833
					291,645
William L. Hensley (D)	Alaska	50.2	46.2	133,235	136,112
*+ Donald E. Young (R)		x	53.8	148,315	140,729
					276,841
+Robert J. Huber (R)	Michigan	x	40.2	114,463	120,426
James Gordon Lott (AIP)	(18)	x	.4	0	0
Matthew Moriaty (USLP)		x	.1	0	0
Sandra L. Peck (SW)		x		0	0
*James J. Blanchard (D)		33.8	58.7	133,639	133,021
Maurice Geary (HR)		x	.4	91	91
					253,538

[000088]

11. More than $74 million was reported spent by the 1161 candidates for Congress who ran in the 1974 general elections. This included 468 Democratic candidates, 407 Republicans and 286 minor party and independent candidates. These figures cover the period from September 1, 1973, to December 31, 1974. See Attachments A, B, and C to the April 21, 1975 Conway affidavit summarizing expenditures for all candidates who ran in the 1974 general elections. The more than $74 million total reported as spent in 1974 by general election Congressional candidates compares with $66.4 million reported as spent in 1972. The 1972 figure covers the period from April 7, 1972, the effective date of the Federal Election Campaign Act of 1971, through December 31, 1972.

12. Major party candidates who ran in the 1974 general election reported spending $72,733,053 compared with $1,184,204 in expenditures reported by minor party and independent candidates. The expenditures reported by minor party and independent candidates represented approximately 1.7 percent of the total spending reported by Congressional candidates who ran in the 1974 general election.

[000089]

House Spending – 1974

13. Some $45.1 million was reported spent by 1,056 House candidates who ran in the 1974 general elections. This included $23,697,812 by 434 Democratic candidates, $20,608,933 by 376 Republican candidates and $825,478 by 246 minor party and independent candidates.

14. There were 323 House incumbents who ran in the 1974 general election against major party challengers. Total expenditures reported by these incumbents was $20,542,838 compared with $12,894,695 reported by their major party challengers.

15. There were 52 House races in which no incumbent competed in the general election. Total expenditures reported by the 52 Democrats in these races were $5,644,054 compared with $4,185,069 spent by their Republican opponents.

16. There were 60 House races in which the incumbent was unopposed in the general election by a major party challenger. This included 59 Democratic incumbents and 1 Republican incumbent. The total expenditures reported by these 60 incumbents was $1,040,089.

[000090]

17. Paragraphs 18-22, 41-44 assume that House candidates may spend $84,000 ($70,000 plus an additional $14,000 in expenditures relating to fundraising) for the primary election and a similar $84,000 for the general election. The computations that are made in paragraphs 18-22 are based on a comparison of the total amount spent by each candidate for the primary and general election with the total of $168,000 (the $84,000 in the primary and the $84,000 in the general).

18. Of the 810 major party House candidates, 22 or 2.7 percent reported total expenditures higher than $168,000. All of these 22 were major party candidates, including 10 incumbents, 3 challengers to incumbents, and 9 candidates in races not involving an incumbent in the general election (2 of these 9 candidates defeated incumbents in the primaries). Of the 22 who spent higher than $168,000,

7 incumbents won and 3 lost, 1 challenger won and 2 lost, and 8 candidates in open races (not involving an incumbent) won and 1 lost.

19. No minor party or independent House candidate in 1974 had expenditures higher than $168,000. The highest total amount reported spent by the 246 minor

[000091]

party and independent House candidates who ran in the general election was $85,680 by Don Elliott (Lib-NY). Elliott ran as a Liberal in the general election following his defeat in the Democratic primary by the incumbent Congressman. Only 15 of the remaining 245 minor party and independent candidates reported spending more than $10,000.

20. Forty major party challengers defeated House incumbents in the general election. Only one of the 40 challengers spent more than $168,000. Eighteen of the 40 challengers spent less than $84,000; 18 of the 40 challengers who won were outspent by the incumbents they defeated.

21. Major party challengers were outspent by incumbents in 78 percent or 252 of the 323 races involving incumbents and major party challengers. Approximately 83 percent or 268 of the 323 major party challengers to incumbents spent less than $84,000 and approximately 69 percent or 223 spent less than $50,000.

22. There were a number of marginal House races in 1974 (*i.e.*, races decided by 55 percent or less) in which the incumbents substantially outspent their major party challengers.

[000092]

Senate Spending – 1974

23. Some $28.9 million was reported spent in the 34 Senate races by the 105 candidates who ran in the 1974 general election. This included $16,583,683 by 34 Democratic candidates, $11,842,625 by 31 Republicans and $458,726 by 40 minor party and independent candidates.

24. There were 22 Senate incumbents who ran in the 1974 general election against major party challengers. Total expenditures reported by these incumbents was $13,151,492 compared with $7,316,731 reported by their major party challengers.

25. There were 9 Senate races in which no incumbent competed in the general election. Total expenditures reported by the 9 Democrats in these races were $4,794,221 compared with $2,422,497 reported spent by their Republican opponents. (Two of the Democrats defeated incumbents in the primary).

26. There were 3 Senate races in which the incumbent was unopposed in the general election by a major party challenger. The total expenditures reported by these three Democratic incumbents was $741,367.

[000093]

27. Paragraphs 28-34, 48-50 assume that Senate candidates may spend the aggregate of 8 cents per adult for the primary election and 12 cents per adult for the general election plus an additional 20 percent in the primary and in the general election for expenditures relating to fundraising in each, combined for a total of 24 cents per adult.

28. Of the 65 major party candidates, 17 had total expenditures greater than 24 cents per adult. These 17 candidates included 9 incumbents, 4 challengers to incumbents (3 of whom were outspent by their incumbent opponents), and 4 candidates running in a race with no incumbent. Of the 17, 8 incumbents won and 1 lost, 1 challenger to an incumbent won and 3 lost, and 2 candidates in open races (not involving an incumbent) won and 2 lost.

29. No minor party or independent Senate candidate had expenditures higher than 24 cents per adult. The highest total reported spent by the 40 minor party and independent candidates was $192,462 by Barbara A. Keating, the Conservative Party candidate in New York. The only other such candidate to spend over $100,000 was John Grady, the American Party candidate in Florida who

[000094]

reported spending $148,495. Only one other candidate reported spending more than $20,000, John M. King in Colorado, an independent candidate who reported $42,181.

30. Two of the 22 major party challengers to incumbents won their election in 1974. Of these two, one, Governor Wendell Ford (D-Ky.), spent more than 24 cents per adult, while one, Gary Hart (D-Colo.), spent less than this amount. Ford outspent his incumbent opponent while Hart was outspent by his incumbent opponent.

31. Major party challengers were outspent by their incumbent opponents in 21 of the 22 races involving an incumbent and major party challenger.

32. The 1 challenger who outspent an incumbent was Governor Wendell Ford who spent $1,006,670 compared with $524,569 by Senator Marlow Cook. Ford received

53.5 percent of the vote compared with Cook's 44.1 percent of the vote. Twenty-four cents per adult multiplied by the voting age population equals $551,040.

The only other challenger to an incumbent who won was Gary Hart who received 57.2 percent of the vote compared with 39.5 percent for Dominick. Dominick

[000095]

outspent Hart $502,343 to $351,557. Twenty-four cents per adult multiplied by the voting age population equals $412,560.

33. There were 9 Senate races involving incumbents in which the winner received less than 55 percent in the general election. Eight were won by incumbents and 1 by a challenger to an incumbent. The 8 winning incumbents all substantially outspent their major party challengers. Five of the 8 spent more than 24 cents per adult, as opposed to 2 of the challengers. These 8 races included:

	Expenditures	Overall Combined Spending Limit	Vote %
McGovern SD-D*	$1,172,831	$ 300,000	53.0
Thorsness R	528,817		47.0
Javits NY-R*	1,090,437	3,048,000	45.3
Clark D	855,576		38.2
Dole KS-R*	1,110,024	384,240	50.9
Roy D	836,927		49.1
Bayh IN-D*	1,024,486	864,720	50.7
Lugar R	619,678		46.4
Schweiker PA-R*	799,499	2,000,640	53.0
Flaherty D	256,483		45.9
Bellmon OK-R*	622,480	450,960	49.4
Edmondson D	195,429		48.9

Packwood OR-R*	333,004	380,880	54.9
Roberts D	80,193		44.2
Young ND-R*	300,121	300,000	48.4
Guy D	115,561		48.3

* Indicates an Incumbent

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Congressional Spending – 1972

34. Over $66.4 million was reported spent by the 1,115 candidates for Congress who ran in the 1972 general elections. This included 460 Democratic candidates, 422 Republicans and 233 minor party and independent candidates. These figures cover the period from April 7, 1972 to December 31, 1972.

35. Major party candidates who ran in the 1972 general election reported spending $64,657,811 compared with $1,670,892 in expenditures reported by minor party and independent candidates. The expenditures reported by minor party and independent candidates represented approximately 2.5 percent of the total spending reported by Congressional candidates who ran in the general election.

House Spending – 1972

36. Some $39.9 million was reported spent by 1,009 House candidates who ran in the 1972 general elections. This included $19,773,619 by 427 Democratic candidates, $18,880,327 by 389 Republican candidates and $1,230,364 by 193 minor party and independent candidates.

[000097]

37. There were 321 House incumbents who ran in the 1972 general election against major party challengers. Total

expenditures reported by these incumbents was $16,336,981 compared with $10,244,723 reported by their major party challengers.

38. There were 59 House races in which no incumbent competed in the general election. Total expenditures reported by the 59 Democrats in these races were $5,520,613 compared with $5,017,313 spent by their 57 Republican opponents.

39. There were 52 House races in which the incumbent was unopposed in the general election by a major party challenger. This included 44 Democratic incumbents and 8 Republican incumbents. The total expenditures reported by these 52 incumbents was $903,342.

40. Of the 816 major party House candidates in the general election, 20 or 2.4 percent reported total expenditures higher than $168,000. These 20 major party candidates included 6 incumbents, 5 challengers to incumbents, and 9 candidates in races not involving an incumbent in the general election (1 of these candidates

[000098]

defeated an incumbent in the primary). Of the 20, 5 incumbents won and 1 lost, 1 challenger won and 4 lost, and 3 candidates in open races (not involving an incumbent) won and 6 lost.

41. The highest total amount reported spent by the 193 minor party and independent candidates who ran in the general election was $285,475 by Allard Lowenstein (Lib-NY). Lowenstein ran as a Liberal in the general election, after losing in a Democratic primary and a court-ordered second primary against a Democratic incumbent. Loweinstein was the only minor party or independent House

candidate to spend more than $168,000. Only 18 of the remaining 193 minor party and independent candidates reported spending more than $10,000 and only one reported expenditures greater than $84,000.

42. Ten major party challengers defeated House incumbents in the general election. Only one of the 10 spent more than $168,000. Three of the 10 spent less than $84,000. Two of the 10 challengers were outspent by the incumbents that they defeated.

43. Major party challengers were outspent by incumbents in almost 78 percent or in 249 of the 321 races involving incumbents and major party challengers.

[000099]

Approximately 89 percent or 285 of the 321 major party challengers to incumbents spent less than $84,000 and approximately 77 percent or 247 spent less than $50,000.

Senate Spending – 1972

44. Some $26.4 million was reported spent in the 33 Senate races by the 106 candidates who ran in the 1972 general election. This included $10,568,496 by 33 Democratic candidates, $15,435,369 by 33 Republicans and $440,528 by 40 minor party and independent candidates.

45. There were 25 Senate incumbents who ran in the 1972 general election against major party challengers. Total expenditures reported by these incumbents was $12,385,599 compared with $6,101,581 reported by their major party challengers.

46. There were 8 Senate races in which no incumbent competed in the general election. Total expenditures reported by the 8 Democrats in these races was

$3,849,246 compared with $3,667,870 reported spent by their Republican opponents. (Two of the Democrats defeated incumbents in the primary).

47. Of the 66 major party candidates, 18 had total expenditures higher than 24 cents per adult. These

[000100]

18 candidates included 7 incumbents, 2 challengers to incumbents (1 of whom was outspent by his incumbent opponent), and 9 candidates running in a race with no incumbent. Of the 18, 7 incumbents won, 2 challengers to incumbents lost and 5 candidates in open races (not involving an incumbent) won and 4 lost.

48. No minor party or independent Senate candidate had total expenditures higher than 24 cents per adult. The highest total reported spent by the 40 minor party and independent candidates was $394,510 by John McKeithen, an independent candidate in Louisiana. The only other such candidate to spend over $10,000 was John Quattrach, an independent candidate in Rhode Island who reported spending $11,904.

49. Five of the 24 major party challengers to incumbents won their election in 1972. Of the 5, none spent more than 24 cents per adult. Three outspent their incumbent opponents, while 2 were outspent by the incumbents they defeated.

50. Major party challengers were outspent by their incumbent opponents in 19 of the 25 races involving an incumbent and major party challenger. Of the 6 challengers who outspent incumbents, 3 won and 3 lost.

[000101]

Presidential Spending – 1972

51. President Richard Nixon reported spending a total of 55.2 million in seeking re-election to the Presidency in 1972. Senator George McGovern reported spending a total of approximately $38.2 million in seeking election to the Presidency in 1972. Minor party committees supporting 8 Presidential candidates and 3 independent Presidential candidates reported spending a total of $1,005,000. The latter represents 1 percent of the total spending reported by the two major party candidates for President in 1972. Both of the major party nominees for President reported total expenditures higher than $36,000,000 while none of the minor party or independent candidates spent more than $36,000,000. The figure $36,000,000 is a total of: (1) $10,000,000 permitted under the 1974 Amendments for Presidential primary campaigns; (2) $20,000,000 permitted under that statute for Presidential general election campaigns; (3) 20 percent of both $10,000,000 and $20,000,000 for expenditures related to fundraising.

Congressional Contributions from Individuals – 1974

52. The 1,161 candidates for Congress who ran in the 1974 general elections reported contributions of $73,483,613 for the period September 1, 1973 through

[000102]

December 31, 1974. An additional $3,687,603 was held as cash on hand by these candidates on September 1, 1973 for an overall total of $77,171,216 in funds available for the 1974 elections. The cash on hand funds represent contributions received prior to September 1, 1973 and

for the most part are funds carried over from past elections. Of the $77,171,216 in total funds available reported by these candidates, major party candidates reported contributions of $75,906,609 compared with $1,264,607 in contributions reported by minor party and independent candidates.

53. If during the period September 1, 1973 through December 31, 1974, the excess of individual contributions over $1,000 were subtracted from the total contributions, $3,781,254 in individual contributions to these 1,161 candidates (not counting loans) would be eliminated.

54. The $3,781,245 given by individuals over and above a $1,000 limit per candidate represents 5.1 percent of the $73,483,613 in contributions raised during the period September 1, 1973 through December 31, 1974. (Cash on hand as of September 1, 1973 is not included in the following analyses, since it is not possible to

[000103]

determine how much of these funds represents contributions over $1,000.)

55. Of the $3,781,254 in contributions over and above a $1,000 limit per candidate, $1,677,672 went to incumbents, compared with $849,367 which went to major party challengers to incumbents. If the excess of individual contributions over $1,000 per candidate were eliminated, about twice as much would be eliminated from the incumbent totals as from the totals for major party challengers to incumbents. ($1,199,147 went to major party candidates in open races not involving an incumbent.)

56. $55,068 of the $3,781,254 in contributions over and above a $1,000 limit went to minor party and independent candidates. This represents 1.5 percent of the total funds raised over and above a $1,000 limit during the period. It also represents 4.4 percent of the $1,264,607 in total contributions reported by independent and minor party candidates.

57. Incumbents who ran in the general election reported contributions during the period September 1, 1973 through December 31, 1974 of $35,704,135 compared with $19,860,210 reported by major party challengers to

[000104]

incumbents in the general election, for a total of $55,564,345. The major party challengers therefore reported raising 35.74 percent of the $55,564,345 total and 55.62 percent of the funds raised by incumbents.

58. If during the period September 1, 1973 through December 31, 1974, the excess of individual contributions over $1,000 were subtracted from the total contributions, the totals raised by incumbents would be $34,012,713 compared with $19,010,843 raised by major party challengers to incumbents in the general election for a total of $53,023,556. Major party challengers, therefore, would have raised 35.84 percent of the $53,023,556 total and 55.88 percent of the funds raised by incumbents.

59. Major party candidates who ran in the general election reported contributions during the period of September 1, 1973 through December 31, 1974 of $72,219,006 compared with $1,264,607 reported by minor party and independent candidates for a total of $73,483,613. Minor party and independent candidates therefore reported raising

1.72 percent of the $73,483,613 total and 1.75 percent of the funds raised by major party candidates.

[000105]

60. If during the period September 1, 1973 through December 31, 1974, the excess of individual contributions over $1,000 were subtracted from the total contributions, the totals raised by major party candidates would be $68,492,817 compared with $1,209,539 raised by minor party and independent candidates for a total of $69,702,356. Minor party and independent candidates therefore would have raised 1.73 percent of the $69,702,356 total and 1.77 percent of the funds raised by major party candidates.

61. If during the period September 1, 1973 through December 31, 1974, the amounts of individual contributions in excess of $2,000 per candidate were eliminated, a total of $2,040,116 in individual contributions to these 1,161 candidates (not counting loans) would be eliminated.

62. The $2,040,116 given by individuals over and above a $2,000 limit per candidate represents 2.7 percent of the $73,483,613 in contributions raised during the period September 1, 1973 through December 31, 1974.

63. Of the $2,040,116 in contributions over and above a $2,000 limit per candidate, $860,224 went to

[000106]

incumbents, compared with $461,596 which went to major party challengers to incumbents. If the excess of individual contributions over $2,000 per candidate were eliminated, about twice as much would be eliminated from the incumbent totals as from the totals for major party challengers to incumbents. ($682,220 went to major party candidates in open races not involving an incumbent.)

64. $36,076 of the $20,040,116 in contributions over and above a $2,000 limit went to major party and independent candidates. This represents 1.8 percent of the total funds raised over and above a $2,000 limit during the period. It also represents 2.9 percent of the total $1,264,607 reported in contributions by independent and minor party candidates.

65. Incumbents who ran in the general election reported contributions during the period September 1, 1973 through December 31, 1974 of $35,704,135 compared with $19,860,210 reported by major party challengers to incumbents in the general election for a total of $55,564,345. The major party challengers therefore reported raising 35.74 percent of the $55,564,345 total reported by these candidates during the period September 1, 1973 through December 31, 1974 and 55.62 percent of

[000107] - [000108]

the funds raised by incumbents.

66. If during the period September 1, 1973 through December 31, 1974, the excess of individual contributions over $2,000 were subtracted from the total contributions, the totals raised by incumbents would be $34,830,161 compared with $19,398,614 raised by major party challengers to incumbents in the general election for a total of $54,228,775. Major party challengers therefore would have raised 35.77 percent of the $54,228,775 total and 55.69 percent of the funds raised by incumbents.

67. Major party candidates who ran in the general election reported contributions during the period of September 1, 1973 through December 31, 1974 of $72,219,006 compared with $1,264,607 reported by minor party and independent candidates for a total of $73,483,613. Minor

party and independent candidates therefore reported raising 1.72 percent of the $73,483,613 total and 1.75 percent of the funds raised by major party candidates.

68. If during the period September 1, 1973 through December 31, 1974, the excess of individual contributions over $2,000 were subtracted from the total contributions, the totals raised by major party candidates would be $70,214,966 compared with $1,228,531 raised by minor party and independent candidates for a

[000109]

total of $71,443,497. Minor party and independent candidates therefore would have raised 1.72 percent of the $72,443,497 total and 1.75 percent of the funds raised by major party candidates.

Congressional Contributions – 1972

69. $69,644,378 was reported in total contributions by the 1,115 candidates for Congress who ran in the 1972 general election (including cash on hand as of April 7, 1972).

70. Major party candidates who ran in the 1972 Congressional general election reported total contributions of $68,029,405 for the period April 7, 1972 through December 31, 1972 (including cash on hand as of April 7). This compares with $1,614,973 in contributions reported by minor party and independent candidates. The contributions reported by minor party and independent candidates represent 2.4 percent of the total contributions reported by Congressional candidates who ran in the 1972 general election.

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Presidential Contributions from Individuals – 1972

71. President Richard Nixon reported raising total contributions of $60.2 million with respect to the 1972 Presidential election as of December 31, 1972 compared with $38.7 million, reported by Senator George McGovern for a total of $98.9 million. Minor party committees supporting 8 minor party candidates for President and 3 independent candidates for President in 1972 reported contributions of $1,043,000.

72. If during the period September 1, 1973 through December 31, 1975, the excess of individual contributions over $1,000 were subtracted from the total contributions, the total raised by Nixon would be $24,470,000 compared with $24,540,000 raised by McGovern. Minor party committees supporting a 1972 Presidential candidate and independent Presidential candidates still would have raised a total of $977,000 in individual contributions.

73. If during the period September 1, 1973 through December 31, 1974, the excess of individual contributions over $1,000 were subtracted from the total contributions, $33,100,000 in individual contributions

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to Nixon would have been eliminated, $13,225,000 in individual contributions to McGovern would have been eliminated, and $66,000 in individual contributions to all minor party and independent Presidential candidates would have been eliminated. It would have thus eliminated 55 percent of Nixon's total contributions, 34 percent of McGovern's total contributions and 6 percent of the total contributions to all minor party and independent candidates for President.

74. The major party challenger to the incumbent President in 1972 reported raising 39.1 percent of the total funds raised by these two candidates and 64.3 percent of the funds raised by the incumbent. If during the period September 1, 1973 through December 31, 1974, the excess of individual contributions over $1,000 were subtracted from the total contributions, the major party challenger would have raised 48.5 percent of the total funds raised by these two candidates and 94 percent of the funds raised by the incumbent.

75. The minor party and independent candidates for President in 1972 reported raising 1.04 percent of the total funds reported raised by all Presidential candidates who ran in the general election and 1.05

[000112]

percent of the total raised by the major party nominees for President. If during the period September 1, 1973 through December 31, 1974, the excess of individual contributions over $1,000 were subtracted from the total contributions, the minor party and independent candidates would have raised 1.81 percent of the total funds raised by all Presidential candidates who ran in the general election and 1.85 percent of the total funds raised by the two major party nominees for President.

76. During the period from April 7, 1972 until December 31, 1972, Governor George Wallace reported total contributions of $1,590,000 with respect to his Presidential campaign. Wallace dropped out of the race following his shooting. If during the period September 1, 1973 through December 31, 1974, the excess of individual contributions over $1,000 were subtracted from the total contributions, $72,011 or 4.5 percent of the total contributions would be eliminated.

Congressional Contributions From Interest Groups – 1974

77. The 1,161 candidates for Congress who ran in the 1974 general elections reported total contributions of $73,483,613 for the period September 1,

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1973 through December 31, 1974.

78. If contributions in excess of $5,000 from registered special interest groups (*i.e.*, registered political committees that are not political committees of political parties and that are not political committees exclusively supporting one candidate) were eliminated, this would have eliminated $923,887 in contributions to these 1,161 candidates (not counting loans).

79. The $923,887 given by registered interest groups over a $5,000 limit per candidate represents 1.3 percent of the $73,483,613 raised by general election candidates during this period.

80. Of this $923,887 in contributions over and above a $5,000 limit per candidate, $513,560 went to incumbents compared with $167,601 which went to challengers to incumbents. The remaining $242,726 went to major party candidates in open races not involving an incumbent. None of these funds went to minor party or independent candidates.

81. If contributions in excess of $10,000 from registered special interest groups were eliminated, this

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would have eliminated $410,486 in contributions to these 1,161 candidates (not counting loans).

82. The $410,486 represents 6/10ths of 1 percent of the $73,483,618 raised by general election candidates during this period.

83. Of this $410,486 in contributions over and above a $10,000 contribution limit per candidate, $266,063 went to incumbents compared with $67,584 which went to challengers to incumbents. The remaining $76,839 went to candidates in open races not involving an incumbent. None of these funds went to minor party or independent candidates.

Congressional Contributions From Interest Groups – 1972

84. The 1,115 candidates for Congress who ran in the 1972 general elections reported total contributions of $62,285,985 for the period April 7, 1972 through December 31, 1972 (not including cash on hand as of April 7, 1972).

85. If contributions in excess of $5,000 from registered special interest groups were eliminated, this would have eliminated $884,297 in contributions to these 1,115 candidates (not counting loans).

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86. The $884,297 given by registered interest groups over and above a $5,000 limit per candidate represents 1.4 percent of the $62,285,985 raised by general election candidates during this period.

87. Of this $884,297 in contributions over and above a $5,000 limit per candidate, $368,731 went to challengers to incumbents, compared with $210,325 which went to incumbents. The remaining $305,241 went to candidates in open races not involving an incumbent.

88. If contributions in excess of $10,000 from registered special groups were eliminated, this would have eliminated $329,656 in contributions to these 1,115 candidates.

89. The $329,656 represents 1/2 of 1 percent of the $62,285,985 raised by general election candidates during this period.

90. Of this $329,656 in contributions over and above a $10,000 contribution limit per candidate, $149,012 went to challengers to incumbents compared with $47,653 which went to incumbents. The remaining $132,991 went to candidates in open races not involving an incumbent.

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Contributions From Individuals to 1974 Congressional Candidates Aggregating Over $25,000

91. During the period from September 1, 1973 through December 31, 1974, 15 individuals each gave contributions aggregating more than $25,000 in amounts of $500 or more, to Congressional candidates for a total of $682,018 (not counting loans). This amount represents less than 1 percent of the total contributions given during that period. If aggregate contributions from an individual to all candidates in excess of $25,000 during this period were eliminated, this would have eliminated $307,018 in contributions from these individuals.

92. If during the period September 1, 1973 though December 31, 1974, the excess of individual contributions over $1,000 were subtracted from the total contributions, $484,818 given by these 15 contributors or more than $25,000 each would have been eliminated. This represents

7/10ths of 1 percent of the total contributions of $73,483,613 given during the period. Of the $484,818 in amounts over and above $1,000 per contribution, $192,650 went to incumbents compared with $95,100 which went to challengers to incumbents. If the excess of individual contributions over $1,000 per

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candidate were eliminated, about twice as much would be eliminated from the incumbent totals as from the totals for challengers to incumbents. An additional $197,068 was given to candidates in open races.

93. During the period from September 1, 1973 through December 31, 1974, H. Ross Perot made 26 contributions to 1974 Congressional candidates in amounts of $500 and over, totaling $75,900. Twenty-four of these 26 donations were made after October 24, 1974, and thus were not available as part of the public record prior to the 1974 general elections (the final campaign disclosure reports prior to the November elections covered a period ending on October 24). Twenty-five of the 26 contributions went to incumbent members of Congress (including 2 who were defeated in the November election). Perot is Chairman of the Board of Electronic Data Systems, Inc., of Dallas, one of the largest suppliers to the government of data processing for medicare and medicaid programs. The Ways and Means Committee has jurisdiction in the House over medicare and medicaid programs, which are administered by the Department of Health, Education and Welfare.

94. Perot made contributions to 12 members of

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the Ways and Means Committee during this period totaling $31,900. Two of the contributions went after the election to members of the Committee who were unopposed in the primary or general election, Omar Burleson (D-Tex.), who received $5,000, and Joe Waggoner (D-La.) who received $5,000. Other contributions included $2,500 to Donald Clancy (R-Ohio), $2,500 to James Corman (D-Cal.), $2,500 to Joe Karth (D-Minn.), $2,500 to Dan Rostenkowski (D-Ill.), $1,500 to Herman Schneebeli (R-Pa.), $1,000 to Phil Landrum (D-Ga.), $1,000 to Al Ullman (D-Oreg.), $900 to Bill Archer (R-Tex.), $5,000 to Joel Broyhill (R-Va.), and $2,500 to Donald Brotzman (R-Colo.). The latter 2 were defeated in the general election and both received their contributions after they lost.

In addition, Perot contributed $2,500 to Rep. James Jones (D-Okla.) and $500 to Rep. James Martin (R-NC). Both received their contributions on December 30, 1974, approximately 2 weeks after they were named to serve on the Ways & Means Committee in the upcoming Congress.

Perot's House contribution also included $2,500 to Rep. Dan Flood (D-Pa.) who serves as Chairman of the Appropriations Subcommittee for the Department of

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Health, Education and Welfare. HEW has responsibility for administering medicare and medicaid programs. Perot also contributed $2,500 each to Reps. John Young (D-Tex.) (unopposed in the primary and general elections), Jim Wright (D-Tex.), Bob Wilson (R-Cal.) and James Collins (R-Tex.). All but the Collins contribution were made after the election.

95. The Finance Committee has jurisdiction in the Senate over medicare and medicaid programs. Perot gave $16,000 to members of the Senate Finance Committee who were running for re-election, including $5,000 each to Mike Gravel (D-Alaska), Robert Packwood (R-Oreg.) and Herman Talmadge (D-Ga.), and $1,000 to Russell Long, Chairman of the Finance Committee, who was unopposed in the general election.

In addition, Perot gave $5,000 each to Senators Milton Young (R-ND) and Daniel Inouye (D-Hawaii), and $2,500 to Richard Stone (D-Fla.). Stone, the successful Florida candidate for Senate, received his contribution after he won the election.

Of the $75,900 in total contributions given by Perot, $50,900 went to members of Congress associated with either the Ways and Means Committee or the Finance

[000120]

Committee. Eighteen of the 26 candidates who received contributions were associated with one of these two committees.

Interest Group Contributions – 1974

96. During the period from September 1, 1973 through October 14, 1974, registered interest groups (not including political parties) contributed $8.5 million directly to candidates in the 1974 Congressional elections.

97. Labor groups contributed more than $4.3 million during the period September 1, 1973 to October 14, 1974, while business and professional groups gave some $3.3 million. The latter total includes $1.6 million from business groups, $1.5 million from health groups, and $182,000

from agriculture groups. Miscellaneous and ideological groups contributed the remaining $887,000.

98. Incumbents received $5.2 million of the $8.5 million total given during this period compared with $1.7 million received by challengers to incumbents, a margin of better than 3 to 1. The bulk of the remainder went to races in which no incumbent was involved. Labor

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groups gave $2.3 million to incumbents compared with $1.1 million to challengers to incumbents, a margin of better than 2 to 1. Business and professional groups gave $2.6 million to incumbents compared with $254,000 to challengers to incumbents, a margin of 10 to 1.

99. During the period from September 1, 1973 through October 14, 1974, the interest groups that made the largest amount of contributions to Congressional candidates through political action committees included: the American Medical Association, $1,093,860; the AFL-CIO, $918,284; the United Auto Workers, $651,426; the maritime-related unions, $479,014; the International Association of Machinists and Aerospace Workers, $301,405; financial institutions, $247,861; the National Education Association (and its state affiliated committees), $229,080; the United Steelworkers of America, $215,925; the National Association of Manufacturers, $214,800; and the National Association of Realtors, $197,200.

100. During the period from September 1, 1973 through October 14, 1974, the leading recipients among Senate general election candidates of contributions from labor groups, included John Glenn (D-Ohio), $148,900;

Senator Birch Bayh (D-Ind.), $141,200; Senator Mike Gravel (D-Alaska), $111,400; Bill Roy (D-Kan.), $84,700; John Culver (D-Iowa), $80,700; Senator Richard Schweiker (R-Pa.), $79,000; Senator Warren Magnuson (D-Wash.), $76,500; Senator Thomas Eagleton (D-Mo.), $70,000; Senator Alan Cranston (D-Cal.), $58,700; and Wendell Ford (D-Ky.), $53,800.

101. The leading recipients among Senate general election candidates from business/professional groups during this period included, Richard Lugar (R-Ind.), $110,500; Senator Alan Cranston (D-Cal.), $51,000; Senator Robert Dole (R-Kan.), $46,100; Senator Marlow Cook (R-Ken.), $40,600; Senator Herman Talmadge (D-Ga.), $40,200; Senator Robert Packwood (R-Oreg.), $39,600; Senator Russell Long (D-La.), $33,800; Senator Warren Magnuson (D-Wash.), $33,000; Senator Peter Dominick (R-Colo.), $32,700; and E. J. Garn (R-Utah), $23,500. Senators Cranston and Magnuson were among the top ten recipients of contributions from both labor groups and business/professional groups.

102. During the period from September 1, 1973 through October 14, 1974, the leading recipients among House general election candidates of contributions from

labor groups included: Rep. Frank Clark (D-Pa.), $35,800; John Reuther (D-Mich.), $35,100; Robert Carr (D-Mich.), $31,800; Abner Mikva (D-Ill.), $27,800; Rep. Edward Mezvinsky (D-Iowa), $26,300; Paul Simon (D-Ill.), $24,700; Bill Clinton (D-Ark.), $24,200; Rep. John Dent (D-Pa.), $22,200; Fran Ryan (D-Ohio), $21,800 and Rep. Pat Schroeder (D-Colo.), $21,600.

103. During the period from September 1, 1973 through October 14, 1974, the leading recipients among House general election candidates of contributions from business/professional groups included Rep. Victor Veysey (R-Cal.), $31,900; Rep. Joel Broyhill (R-Va.), $31,900; Rep. Wright Patman (D-Tex.), $30,000; Rep. William Hudnut, $29,900; Rep. John Rhodes (R-Ariz.), $28,800; Rep. Robert Mathias (R-Cal.), $28,600; Rep. Dan Kuykendall (R-Tenn.), $26,800; Rep. Donald Brotzman (R-Colo.), $26,700. Rep. Richard Shoup (R-Mont.), $21,300; and Rep. William Scherle (R-Iowa), $20,400.

104. During the 1974 Congressional elections, there were 120 registered interest groups that gave contributions on 278 occasions to two or more candidates running for the same office. The contributions given in this manner totalled $676,897.

105. There are presently 37 members of the House Ways and Means Committee (including 18 who were members in the 93rd Congress). This Committee has jurisdiction over tax, social security, health insurance, and trade matters, among others. Of the 37 Committee members, 6 ran unopposed in the 1974 general election and 2 did not accept any contributions from registered interest groups. The remaining 29 members received $441,103 in contributions from special interest groups during the 1974 elections. This included $225,769 from labor groups and $215,234 from business/professional groups. The latter included $121,614 from business groups and $87,720 from health groups.

In addition, two members of the Ways and Means Committee in the previous Congress were defeated in the November, 1974 election and one member was killed in

a plane crash following his re-election. These three former members of the Committee received a total of $98,652 in contributions from interest groups in the 1974 election.

106. A political committee representing the securities industry (the Securities Industry Political Action Committee) contributed $18,600 to 11 members of

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the House Ways and Means Committee in the 93rd Congress. The Ways and Means Committee has jurisdiction over all tax matters, including tax issues relevant to the securities industry. All but one of the contributions (a $100 donation to Rep. Donald Brotzman (R-Colo.)) were made on October 30, 1974 or thereafter. Since the last campaign finance disclosure report due before the November elections covered a period ending on October 24, 1974, 10 of the 11 contributions by this interest group were not available as part of the public record prior to the election. Two of the ten contributions went to candidates who were unopposed in the primary and general election, Rep. Omar Burleson (D-Tex.), who received $3,000 and Rep. Joe Waggoner (D-La.) who received $3,000. Other contributions included: Rep. Jerry Pettis (R-Cal.), $3,000; Rep. Donald Clancy (R-Ohio), $1,500; Rep. John Duncan (R-Tenn.), $1,500; Rep. Joe Karth (D-Minn.), $1,500; Rep. Dan Rostenkowski (D-Ill.), $1,500; Rep. Herman Schneebeli (R-Pa.), $1,500; Rep. Phil Landrum (D-Ga.), $1,000; and Rep. Al Ullman (D-Oreg.), $1,000. Of the ten contributions, six went to Democrats and four went to Republicans.

107. During the period September 1, 1974 through December 31, 1974, individuals affiliated with

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the oil industry made campaign contributions of more than $340,000 to four members of the Senate Finance Committee who either ran for re-election in 1974 or were raising funds for a 1976 Presidential campaign. The Finance Committee has jurisdiction over key issues affecting the oil industry such as the oil import quota program. The contributions from individuals affiliated with the oil industry included $135,000 to Senator Lloyd Bentsen (D-Tex.), a Democratic Presidential candidate; $81,000 to Senator Robert Dole (R-Kan.), $73,000 to Senator Mike Gravel (D-Alaska); and $53,000 to Senator Russell Long (D-La.), Chairman of the Committee. Long was unopposed in the 1974 election and won his primary against two opponents with 75 percent of the vote. More than 50 percent of Gravel's oil-related contributions or $37,765 was donated after the November, 1974 election, including some $28,000 given at a Dallas, Texas, fundraising event for the Alaskan Senator.

108. During the period September 1, 1973 through December 31, 1974, political committees of maritime-related unions gave $22,200 to Rep. Frank Clark (D-Pa.) and $22,000 to Rep. Frank Clark (D-Pa.) and $22,000 to Senator Russell Long (D-La.). Clark, defeated in the November elections, served as Chairman of the Merchant Marine Subcommittee of the House

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Committee on Merchant Marine & Fisheries. Long, unopposed in the 1974 general election and a winner of his primary with 75 percent of the vote, served as Chairman of the Merchant Marine Subcommittee of the Senate Commerce Committee. Both of these subcommittees handled legislation of vital interest to the maritime unions.

109. During the period September 1, 1973 through December 31, 1974, the political arm of the Teamsters Union in Alaska made contributions to three of the candidates in the Alaska Senate race. Incumbent Senator Mike Gravel received $3,100, while his Democratic primary challenger, Eugene Guess received $3,000 and Terry Miller, an unsuccessful Senate candidate in the Republican primary, received $4,500.

110. During the period from September 1, 1973 through December 31, 1974, the American Medical Association (AMA) through its national political committee and the political arm of its California affiliate, gave a total of $225,678 to 40 California House candidates in the 1974 election.

The AMA gave contributions totaling $151,165 to 29 of the 37 California incumbents who faced

[000128]

major party opposition. This included 17 incumbent Republicans and 12 incumbent Democrats, ranging in ideological spectrum from Republican conservatives, John Rousselot and Barry Goldwater, Jr., to Democratic Liberals, Ron Dellums and John Burton, Jr. Major contributions to incumbents included $22,649 to Bob Mathias (along with $6,000 to his Democratic challenger, John Krebs), $21,625 to Victor Veysey and $15,000 to Burt Talcott.

Only 2 challengers to incumbents in California received AMA contributions for a total of $6,250. In both cases, the incumbents in those races received larger contributions from the AMA than their challengers.

There were 5 open races in California not involving an incumbent in the general election. The AMA gave $68,363 to 9 candidates in those 5 races. In the 7th

Congressional District, Democratic winner, George Miller, received $3,000 while his Republican opponent, Gary F Fernandez received $1,363. In the 13th Congressional District, Democratic winner Norman Mineta received $5,000 while his Republican opponent, George Milias, received $6,000. In addition, Antony C.

[000129]

Gualtieri, a loser in the RGpublican primary, received $5,000.

In the 24th Congressional District, Democratic winner Henry Waxman received $9,000. In the 34th Congressional District, Democratic winner Jerry Patterson received $1,000 while his Republican opponent David Rehman received $28,000.

The AMA also gave $10,000 each to Senator Alan Cranston and H.L. Richardson, his Republican opponent. In addition, the California arm of the AMA gave $5,000 to the REpublican candidate for the Senator in Nevada, Paul Laxalt.

111. During the period from September 1, 1973 through December 31, 1974, the American Dental Association (ADA) through its national political committee and the political arm of its California affiliate gave a total of $70,500 to 37 California House candidates in the 1974 general election.

The ADA gave contributions totaling $60,500 to 32 of the 37 California incumbents w. o faced major party opposition. This included 17 incumbent Democrats

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and 15 incumbent Republicans, ranging in ideological spectrum from Republican conservative, Barry Goldwater,

Jr., to Democratic liberal Ron Dellums. Major contributions to incumbents included $4,000 each to Democrats John Moss and James Corman and Republicans Don Clausen and Bob Wilson. No challenger to an incumbent received any contribution. In the 5 open races not involving an incumbent, 5 candidates received a total of $10,500 from the ADA. These ranged in size from $500 to Democratic winner Henry Waxman in the 24th to $3,000 to Republican loser David Rehman in the 38th.

The ADA also gave $5,000 to Senator Alan Cranston and $500 to Earl Brian who lost in the Republican Senate primary.

Independent Expenditures

112. According to a report issued on November 14, 1973, by the General Accounting Office, a total of $98,060 in independent expenditures by 21 individuals was reported under Section 305 of the FECA of 1971 with respect to the 1972 Presidential elections.

113. During the period September 1, 1973, through December 31, 1974, a total of $15,802 in

[000131]

expenditures by 13 individuals and one group was reported under Section 305 with respect tothe 1974 Congressional elections.

114. The check-off method of generating funds for political campaigns involves more families from income levels below $5,000 than any other method of financing political campaigns. The following chart tabulates the percentage of families contributing to campaign by income class and by type of participation:

[000132]

Income[a] Class	Private Contributors[b]	Tax Deductions[c]		Tax Credits[c]		Tax Check-Off
	U.S. 1972	U.S. 1972	Calif. 1970	U.S. 1972	Ore. 1970	Iowa 1973
$ 0 - 4,999	3.7%	* %	.2%	.4%	.02%	12.0%
5,000 - 9,999	11.5	*	.7	2.2	.1	9.8
10,000 - 14,999	11.7	1.3	1.7	2.8	.4	12.6
15,000 - 19,999	19.8	2.6[d]	3.3	3.5[d]	1.2)	15.3
20,000 and more	32.0	5.7[d]	9.2	5.1[d]	5.9)	
TOTAL	12.4%	1.0%	2.1%	2.1%	.5%	11.9%

* Sample too small for reliable tabulation.

[a] Total family income in first column; adjusted gross income in all others.

[b] Number of families contributing. Based on Twentieth Century Fund Survey on Political Finance, by National Opinion Research Center at the University of Chicago.

[c] Based on number of returns taking deductions and credits.

[d] Estimated. Included proportionate distribution between two income classes of IRS information provided for the two combined.

Sources: U.S. Internal Revenue Service, California Franchise Tax Board, Oregon Department of Revenue, Iowa Department of Revenue

Prepared by David Adamany, Secretary of Revenue, State of Wisconsin

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115. At plaintiffs' suggestion defendants have performed additional computations with respect to paragraphs 52-61 and 91-92 supra) (pars. 58-66 and 100-101 of the April 21, 1975 Conway affidavit), on the basis of additional information and assumptions relating to loans. These conputations are based on the assumptions described in paragraph 2, supra, with the following differences:

(a) In lieu of paragraph 2(d), supra, substitute the following: Contributions are defined as total campaign receipts less refunds and rebates.

(b) In lieu of paragraph 2 (e), supra, insert the following: In determining the amounts of individual contributions over and above $1,000 per contribution in the 1974 House and Senate elections loans are included, and the following are no not included: (i) cash on hand as of September 1, 1973, since it is not possible to determine how much of these funds represent conttributions over $1,000 and (ii) contributions by candidates to their own campaigns since under the Federal Election Campaign Act of 1971 and the 1974 Amendments to the Federal Election Campaign Act, House candidates can contribute up to $25,000 and Senate candidates up to $35,000 for their own campaigns.

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The computations of paragraphs 52-60 and 91-92 based on the additional assumptions and information are as follows:

52. The 1161 candidates for Congress who ran in the 1974 general elections reported contributions of $75,269,291 for the period September 1, 1973 through December 31, 1974. An additional $3,687,603 was held as cash on hand by these candidates on September 1, 1973, for an overall total of $78,965,894 in funds available for the 1974 elections. The cash on hand funds represent contributions received prior to September 1, 1973, and for the most part are funds carried over from past elections. Of the $78,956,894 in total funds available reported by these candidates, major party candidates reported contributions of $77,677,287 compared with $1,279,607 in contributions

reported by minor party and independent candidates.

53. If during the period September 1, 1973 through December 31, 1974 the excess of individual contributions in excess of $1,000 per

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candidate were subtracted from the total raised, the total contribution figure to these 1161 candidates would be $5,521,469 less.

54. The $5,521,469 given by individuals over and above a $1,000 limit per candidate represents 7.3 percent if the $75,269,291 in contributions raised during the period September 1, 1973, through December 31, 1974.

55. Of the $5,521,469 in contributions over and above a $1,000 limit per candidate, $1,822,987 went to incumbents,ccompared with $1,318,440 which went to major party challengers to incumbents. If the excess of individual contributions over $1,000 per candidate were eliminated, about one and one-half as much would be eliminated from the incumbent totals as from the totals for major party challengers to incumbents. ($2,286,070 went to major party candidates in open races not involving an incumbent.)

56. $93,972 of the $5,521,469 in contributions over and above a $1,000 limit went to minor party and independent candidates. This

[000136]

represents 1.70 percent of the total funds raised over and above a $1,000 limit during the period. It also represents 7.34 percent of the $1,279,607 in total

contributions reported by independent and minor party candidates.

57. Incumbents who ran in the general election reported contributions during the period September 1, 1973, through December 31, 1974, of $36,123,885 compared with $20,276,551 reported by major party challengers to incumbents in the general election, for a total of $56,400,-436. The major party challengers therefore reported raising 35.95 percent of the $56,400,436 total and 56.13 percent of the funds raised by incumbents.

58. If during the period September 1, 1973 through December 31, 1974, the excess of individual contributions over $1,000 were subtracted from the total contributions, the totals raised by incumbents would be $34,300,898 compared with $18,958,111 raised by major party challengers to incumbents in the general election for a total of $53,259,009. Major party

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challengers, therefore, would have raised 35.60 percent of the $53,259,009 total and 55.27 percent of the funds raised by incumbents.

59. Major party candidates who ran in the general election reported contributions during the period of September 1, 1973, through December 31, 1974, of $73,988,684 compared with $1,279,607 reported by minor party and independent candidates for a total of $75,269,291. Minor party and independent candidates therefore reported raising 1.70 percent of the $75,269,291 total and 1.73 percent of the funds raised by major party candidates.

60. If during the period September 1, 1973 through December 31, 1974, the excess of individual contributions

over $1,000 were subtracted from the total contributions, the totals raised by major party candidates would be $68,562,187 compared with $1,185,635 raised by minor party and independent candidates for a total of $69,747,-822. Minor party and independent candidates therefore would have raised 1.70 percent of the $69,747,822 total and

[000138]

1.73 percent of the funds raised by major party candidates.

91. During the period from September 1, 1973 through December 31, 1974, 21 individuals each gave contributions aggregating more than $25,000 in amounts of $500 or more, to Congressional candidates for a total of $879,665. This amount represents 1.2 percent of the total contributions given during that period. If aggregate contributions from an individual to all candidates in excess of $25,000 during this period were eliminated, this would have eliminated $354,665 in contributions from these individuals.

92. If during the period September 1, 1973 through December 31, 1974, the excess of individual contributions over $1,000 were subtracted from the total contributions, $675,456 given by these 21 contributors of more than $25,000 each would have been eliminated. This represents less than 1 percent of the total contributions of $75,269,-291 given during the period. Of the $675,465 in amounts over and

[000139]

above $1,000 per contribution, $192,650 went to incumbents compared with $156,942 which went to challengers

to incumbents. If the excess of individual contributions over $1,000 per candidate were eliminated, about one and one-fourth as much would be eliminated from the incumbent totals as from the totals for challengers to incumbents. An additional $325,873 was given to candidates in open races.

117. Contributors Who Gave More Than $20,000 to Congressional Candidates

The following table list alphabetically the 36 contributors who each gave more than $20,000 in total to Congressional candidates in the November, 1972 election. The total figure is in the center column. The other columns show how the contributions were distributed between parties and incumbents and non-incumbents. The "CHALL" column shows contributions to challengers who opposed an incumbent candidate. The "NEITHER" column shows contributions to candidates who ran in races where there was no incumbent. The figures cover both Senate and House races.

The full identity of the contributors listed

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below, and the names of the candidates and the amounts they received are printed in paragraph 118, *infra*.

[00141]

NAME	REP	DEM	OTHER	TOTAL	INCUM	CHALL	NEITHER
Adler	$ 0	$24,976	$ 0	$24,976	$ 0	$24,976	$ 0
Bernstein	4,000	21,000	2,500	27,500	9,500	8,000	10,000
Blodgett	37,500	0	0	37,500	33,000	1,000	3,500
Brophy	25,000	0	0	25,000	0	25,000	0
Burrell	21,500	0	0	21,500	12,500	1,500	7,500
Davis	2,000	74,000	0	76,000	41,000	8,000	27,000
Etcheverry	1,750	38,000	500	40,250	12,500	21,750	6,000
Goldblum **	0	49,440	0	49,440	33,600	12,960	2,880
Grimson	0	26,000	0	26,000	7,000	8,000	11,000
Johnson	27,500	0	0	27,500	15,250	3,500	8,750
Kirkpatrick	0	0	25,000	25,000	0	0	25,000
Lasker	0	39,000	0	39,000	28,500	3,500	7,000
May	108,000	0	2,000	110,000	54,000	15,500	40,500
Miller	19,080	12,500	1,500	33,080	25,000	6,080	2,000
Mulcahy	46,000	4,000	0	50,000	27,000	21,000	2,000
Noe	3,000	14,000	5,000	22,000	15,000	0	7,000
Olin	83,000	0	0	83,000	32,500	21,500	29,000

Palevsky	0	24,000	0	24,000	3,000	11,000	10,000
Payson	58,500	0	0	58,500	29,000	16,500	13,000
Peretz	0	33,544	0	33,544	4,500	20,953	8,091
Pew[1]	33,500	0	0	33,500	25,000	2,000	6,500
Pew[2]	5,500	0	0	5,500	5,500	0	0
Pew[3]	24,500	0	0	24,500	19,000	0	5,500
Riklis	0	23,500	0	23,500	15,000	1,000	7,500
Rollins	28,500	0	0	28,500	9,000	12,000	7,500
Rosenbloom	0	23,000	2,000	25,000	3,000	14,000	8,000
Saft **	0	71,500	0	71,500	59,500	9,500	2,500
Scaife	56,000	0	0	56,000	20,500	13,000	22,500
Scheuer	0	28,588	0	28,588	0	0	28,588
Segal	25,453	2,561	18,725	46,739	20,095	18,725	7,919

NAME	REP	DEM	OTHER	TOTAL	INCUM	CHALL	NEITHER
Simon	$22,190	$ 0	$ 0	$22,190	$16,606	$ 2,030	$ 3,554
Spencer	25,000	0	0	25,000	0	0	25,000
Stone	20,900	2,412	0	23,312	10,412	11,900	1,000
Towsley	24,000	0	0	24,000	24,000	0	0
Wallace	23,180	0	0	23,180	5,380	6,500	11,300
Weinberg**	0	87,087	0	87,087	52,195	14,400	20,492
TOTAL	725,553	599,108	57,225	1,381,886	668,038	335,774	378,074

1. Mary Ethel Pew
2. Estate of J.N. Pew
3. W. Crocker Pew

** Contributors Goldblum, Saft and Weinberg channeled their donations through the National Committee for the Re-Election of a Democratic Congress (known as the Strauss Committee). They were allowed to designate (earmark the funds) the candidates receiving their money. It is not known if all the earmarked money actually went to each of the designated candidates.

118. Major Contributors and Recipients in the 1972 Congressional Elections

This table lists alphabetically the 35 individuals who contributed at least $20,000 to candidates in the 1972 Congressional election. Under each contributor's name there is an alphabetical list of the candidates and the amounts they received.

Three contributors (Goldblum, Saft, Weinberg) channeled their funds through the National Committee for the Re-Election of a Democratic Congress (called the Strauss Committee) but earmarked the money for specific candidates. The candidates listed for those contributors are those for whom the money was earmarked: it is not known if the earmarked amounts actually were given to each of the candidates.

*Indicates the candidate was an incumbent. The column following a name lists the candidate's state and congressional district.

HELEN & ROBERT ADLER — CHICAGO, ILLINOIS — INVESTOR

Ottinger, Richard	D	NY 23	$24,976
		TOTAL	$24,976

CAROL BERNSTEIN — SCARSDALE, NEW YORK — HOUSEWIFE

Abourezk, James	D	SD SEN	$ 1,000	Holtzman, Elizabeth	D	NY 16	$ 500
Abzug, Bella	D*	NY 20	2,000	Kerry, John F.	D	MA 05	4,000
Aspin, Les	D*	WI 01	500	Lowenstein Allard	LIB	NY 14	2,500
Biden, Joseph R.	D	DE SEN	1,000	McCloskey, Paul	R*	CA 17	3,000
Brademas, John	D*	IN 03	500	Miller, Howard M.	R	MA 09	1,000
Brown, George E.	D	CA 38	4,000	Morse, Wayne	D	OR SEN	2,000
Camacho, Julian	D	CA 12	500	Schroeder, Patricia	D	CO 01	500
Conyers, John	D*	MI 01	1,000	Thoresen, Walter P.	D	WI 03	500
Dellums, Ronald	D*	CA 07	500	Young, Andrew	D	GA 05	500
Drinan, Robert F	D*	MA 04	2,000				
				TOTAL			$ 27,500

JOHN W. BLODGETT, JR. GRAND RAPIDS, MICHIGAN LUMBER & BANKING

Baker, Lamar	R*	TN 03	$ 3,000	Mailliard, William	R*	CA 06	3,000
Bloom,Allen	R	IN 04	500	Neal, Joseph G	R	WV 04	3,000
Cochran, Thad	R	MS 04	500	Peyser, Peter A.	R*	NY 23	3,000
Dennis, David W.	R*	IN 10	3,000	Powell, Walter	R*	OH 08	3,000
Esch, Marvin	R*	MI 02	1,000	Shoup, Richard G.	R*	MT 01	2,500
Griffin, Robert	R*	MI SEN	6,000	Schwengel, Fred	R*	IA 01	500
Harvey, James	R*	MI 08	3,000	Thurmond, Strom	R*	SC SEN	1,000
Ketchum, William	R	CA 36	500	Tower, John G.	R*	TX SEN	3,000
Lloyd, Sherman	R*	UT 02	500	Zwach, John M	R*	MN 06	500

TOTAL $ 37,500

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TRUMAN W. BROPHY III ACAPULCO, MEXICO

Brophy, Bill	R	CA 30	$25,000	TOTAL	$25,000

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CONSTANCE MELLON BURRELL PITTSBURGH, PENNSYLVANIA MELLON FAMILY

Domenici, Peter	R	NM SEN	$ 1,500	Schneebeli, Herman	R*	PA 17	$ 2,500
Heinz, H. John III	R*	PA 18	10,000	Shuster, E.G.	R	PA 09	3,000
Hibbard, Henry S.	R	MT SEN	1,500	Thompson, Fletcher	R	GA SEN	1,500
Hirsch, Robert	R	SD SEN	1,500				

TOTAL $21,500

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MR & MRS LEONARD DAVIS NEW YORK, NEW YORK FOUNDER PENN COLONIAL (INSURANCE GROUP)

Anastasi, Joseph	D	MD 08	$ 1,000	Green Edith	D*	OR 03	$ 1,000
Biden, Joseph R.	D	DE SEN	1,000	Green, William J	D*	PA 03	1,000
Blatnik, John A.	D*	MN 08	1,000	Hempelmann, John	D	WA 01	5,000
Brademas,John	D*	IN 03	5,000	Huddleston, Walter	D	KY SEN	5,000
Burke, Yvonne B.	D	CA 37	1,000	Jordan, Barbara	D	TX 18	1,000
Carey, Hugh	D*	NY 15	1,000	McCarthy, Richard	D	NY 36	1,000
Daniels, Jack	D	NM SEN	5,000	Metcalf, Lee	D*	MT SEN	10,000
Drinan, Robert	D*	MA 04	1,000	Pell, Clairborne	D*	RI SEN	1,000
Edmondson, Ed	D	OK SEN	5,000	Reid, Ogden	D*	NY 24	10,000
Eilberg, Joshua	D*	PA 04	1,000	Sanders, Barefoot	D	TX SEN	5,000
Esch, Marvin	R*	MI 02	1,000	Spong, William B.	D*	VA SEN	5,000

Galifianakas, Nick	D	NC SEN	5,000	Steele, Robert	R*	CT 02	1,000
Grav, Kenneth	D*	IL 24	1,000	Widnall, William	R*	NJ 07	1,000
					TOTAL		$76,000

DOMINICK ETCHEVERRY NEW YORK, NEW YORK INVESTOR

Abourezk, James	D	SD SEN	$ 3,000	McCarthy, Richard	D	NY 36	$ 500
Anderson, William	D*	TN 06	500	McCloskey, Paul	R*	CA 17	500
Bergland, Robert	D*	MN 07	500	Merson, Alan	D	CO 04	500
Biden, Joseph R.	D	DE SEN	3,000	Metcalf, Lee	D*	MT SEN	2,000
Brown, George R.	D	CA 38	500	Mezvinsky, Edward	D	IA 01	500
Carr, M. Robert	D	MI 06	500	Mikva, Abner	D*	IL 10	500
Clark, Dick	D	IA SEN	3,000	Miller, Harold O.	D	VA 10	500
Davis, William	D	ID SEN	3,000	Mondale, Walter	D*	MN SEN	1,000
Dow, John G.	D*	NY 26	1,000	Ottinger, Richard	D	NY 23	500
Drinan, Robert	D*	MA 04	1,000	Owens, Wayne	D	UT 02	500
English, Jerry	D	NJ 12	500	Pell, Claiborne	D*	RI SEN	1,000
Fornos, Werner	D	MD 04	500	Pritchard, Joel	R	WA 01	500
Fithian, Floyd	D	IN 02	500	Roncalio, Teno	D*	WY 01	500
Goodrich, James	D	OH 12	500	Roush, J. Edward	D*	IN 01	500
Hathaway, William	D	ME SEN	3,000	Runnels, Harold	D*	NM 02	500
Jacobs, Andrew	D*	IN 11	1,000	Ruppert, James	D	OH 08	500
Kelley,Frank	D	MI SEN	3,000	Sharp, Philips	D	IN 10	500

Kerry, John	D	MA 05	500	Steelman, Alan	R	TX 05	750
Koch, Edward	D*	NY 18	500	Thompson, Frank	D*	NJ 04	1,000
Kucinich, Dennis	D	OH 23	500	Udall,Morris	D*	AZ 02	500
Lowenstein, Allard	LIB	NY 14	500				
					TOTAL		$40,250

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STANLEY GOLDBLUM**LOS ANGELES, CALIFORNIA FORMER PRESIDENT, EQUITY FUNDING CORP.

Anderson, Glenn	D*	CA 35	$960	Johnson, Harold T.	D*	CA 02	$960
Anderson, William	D*	TN 06	960	Kelley, Frank J.	D	MI SEN	6,000
Annunzio, Frank	D*	IL 11	960	Leggett, Robert L.	D*	CA 04	960
Aspin, Les	D*	WI 01	960	Melcher, John	D*	MT 02	960
Begich, Nick	D*	AK 01	960	Mikva, Abner J.	D*	IL 10	960
Brademas, John	D*	IN 03	1,920	Moss, John E.	D*	CA 03	1,920
Breckinridge, Frank	D	KY 06	960	McCormack, Mike	D*	WA 04	960
Burke, Yvonne B.	D	CA 37	1,920	McFall, John J.	D*	Ca 15	960
Burton, Phillip	D*	CA 05	960	McKay, Gunn	D*	UT 01	960
Byron, Goodloe	D*	MD 06	960	Obey, David R.	D*	WI 07	960
Corman, James C.	D*	CA 22	960	Olsen, Arnold	D	MT 01	960
Danielson, George	D*	CA 29	960	Rees, Thomas M.	D*	CA 26	960

Denholm, Frank E.	D*	SD	01	960	Roush, J.Edward	D*	IN	04	960
Dellums, Ronald	D*	CA	07	960	Roy, William R.	D*	KS	02	960
Edwards, Don	D*	CA	09	960	Roybal, Edward	D*	CA	30	960
Hanna, Richard T.	D*	CA	34	960	Sanders, Barefoot	D	TX	SEN	6,000
Hawkins, Augustus	D*	CA	21	960	Sisk, B.F.	D*	CA	16	960
Holifield, Chet	D*	CA	19	960	Van Deerlin, Lionel	D*	CA	41	960
Jacobs, Andrew	D*	IN	11	960	Waldie, Jerome	D*	CA	14	960
					TOTAL				49,440

488

BETTINA GRIMSON (MRS. S.B.) NEW YORK, NEW YORK RETIRED PHYSICIAN

Abourezk, James	D	SD	SEN	$ 2,000	Howard James	D*	NJ	03	$ 500
Anderson, William	D*	TN	06	1,000	Koch, Edward	D*	NY	18	500
Biden, Joseph R.	D	DE	SEN	3,000	McKeever,Patrick	D	SD	02	2,000
Bergland, Robert	D*	MN	07	1,000	Mikva, Abner	D*	IL	10	1,000
Clark, Dick	D	IA	SEN	3,000	Miller, Harold	D	VA	10	2,000
Davis, William	D	ID	SEN	3,000	Roncalio, Teno	D*	WY	01	1,000
Fornos, Werner	D	MD	04	2,000	Roy, William	D*	KS	02	1,000
Grasso, Ella T	D*	CT	06	1,000	Violette, Elmer	D	ME	02	2,000
					TOTAL				$ 26,000

** Contributors Goldblum, Saft and Weinberg channeled their donations through the National Committee for the Re-Election of a Democratic Congress (known as the Strauss Committee). They were allowed to designate (earmark the funds) the candidates receiving their money. It is not known if all the earmarked money actually went to each of the designated candidates.

[00147]

J. SEWARD JOHNSON NEW BRUNSWICK, NEW JERSEY RETIRED CHAIRMAN JOHNSON & JOHNSON

489

Baker, Howard R.	R*	TN	SEN	$1,500	Ketchum, William	R	CA	36	$1,000
Brooke, Edward W.	R*	MA	SEN	2,500	Lujan, Manuel Jr.	R*	NM	01	500
Case, Clifford P.	R*	NJ	SEN	4,500	Mailliard, William	R*	CA	06	750
Frelinghuysen,Peter	R*	NJ	05	500	Miller, Jack	R*	IA	SEN	2,500
Gude, Gilbert	R*	MD	08	2,000	Peyser, Peter A.	R*	NY	23	500
Hawke, R. Jack	R	NC	04	500	Schiaffo, Alfred	R	NJ	09	1,500
Helms, Jesse	R	NC	SEN	750	Thompson, Fletcher	R	GA	SEN	5,000
Holt, Marjorie	R.	MD	04	1,500	Vergari, Carl	R	NY	24	1,000
Hudnut, William	R	IN	11	1,000	TOTAL				$27,500

V.H. KIRKPATRICK JONESBORO, LOUISIANA
CAR DEALER

McKeithen, John	IND	LA SEN	$25,000	
			TOTAL	$25,000

MARY WOODWARD LASKER NEW YORK, NEW YORK PHILANTHROPIST

Abourezk, James	D	SD SEN	$ 1,000	
Biden, Joseph R.	D	DE Sen	$ 1,000	
Corman, James C.	D*	CA 22	$ 1,000	
Daniels, Jack	D	NM SEN	$ 1,000	
Davis, William E.	D	ID SEN	$ 1,000	
Delaney, James	D*	NY 09	$ 1,000	
Edmondson, Ed	D	OK SEN	$ 1,000	
Flood, Daniel	D*	PA 11	$ 6,000	
Galifianakis, Nick	D	NC SEN	$ 2,000	
Grasso, Ella	D*	CT 06	$ 1,000	
Hansen, Julia B.	D*	WA 03	$ 1,000	
Haskell,Floyd K.	D	CO SEN	$ 1,000	
McIntyre, Thomas	D*	NH SEN	$ 1,000	
Meeds, Lloyd	D*	WA 02	$ 1,000	
Metcalf, Lee	D*	MT SEN	$ 1,000	
Mezvinsky, Edward	D	IA 01	$ 500	
Nunn, Sam, Jr.	D	GA SEN	$ 1,000	
Obey, David R.	D*	WI 07	$ 500	
O'Neill,Thomas P.	D*	MA 08	$ 2,000	
O'Hara, James	D*	MI 12	$ 1,000	
Pell, Claiborne	D*	RI SEN	$ 1,000	
Pepper, Claude	D*	FL 14	$ 1,000	
Rogers, Paul G.	D*	FL 11	$ 1,000	
Rooney, John J.	D*	NY 14	$ 1,000	
Roy, William R.	D*	KS 02	$ 1,000	
Sanders, Barefoot	D	TX SEN	$ 1,000	
Spong, William B.	D*	VA SEN	$ 1,000	
Staggers, Harley	D*	WV 02	$ 4,000	
Yates, Sidney R.	D*	IL 09	$ 1,000	
			TOTAL	$39,000

CORDELIA SCAIFE MAY PITTSBURGH, PENNSYLVANIA FINANCIER-MELLON FAMILY

Abdnor, James	R	SD 02	$ 2,500	Johnson, Albert W.	R*	PA 23	$ 1,000
Allott, Gordon	R*	CO SEN	$ 1,000	Kemp, Jack	R*	NY 38	$ 1,000
Ashbrook, John M	R*	OH 17	$ 1,000	Ketchum, William	R	CA 36	$ 1,500
Baker, Howard	R*	TN SEN	$ 1,000	Kuykendall, Dan	R*	TN 08	$ 1,500
Baker, Lamar	R*	TN 03	$ 1,500	Kyl, John H.	R*	IA 04	$ 1,500
Bartlett, Dewey F.	R	OK SEN	$ 3,000	Lamkin, Robert	R	IL 22	$ 1,500
Beard, Robin L.	R	TN 06	$ 1,500	Landgrebe,Earl F.	R*	IN 02	$ 1,500
Bethel, Paul D.	R	FL 13	$ 1,000	Lott, Trent	R	MS 05	$ 2,500
Beister, Edward G.	R*	PA 08	$ 500	McClure, James A.	R	ID SEN	$ 3,000
Catarinella, Roland	R	PA 14	$ 1,000	McDade, Joseph M.	R*	PA 10	$ 500
Chafee, John	R	RI SEN	$ 3,000	McKevitt, James D.	R*	CO 01	$ 1,500
Cohen, William	R	ME 02	$ 1,500	Miller, Jack	R*	IA SEN	$ 1,000
Collins, John T.	IC	MA 04	$ 2,000	Mitchell, Donald	R	NY 31	$ 1,500
Conlan, John B.	R	AZ 04	$ 2,500	Nunn, Louis B.	R	KY SEN	$ 3,000
Coughlin,Lawrence	R	PA 13	$ 500	Peyser, Peter A.	R*	NY 23	$ 1,500
Crane , Philip M.	R*	IL 12	$ 3,000	Pfender, William	R	PA 04	$ 2,000
Curtis, Carl T.	R*	NB SEN	$ 1,000	Powell, Walter E	R*	OH 08	$ 1,500
Dennis, David W.	R*	IN 10	$ 1,500	Price, Robert	R*	TX 13	$ 2,000
Dickenson, William	R*	AL 02	$ 1,500	Roberts, Courtney	R	TX 24	$ 1,500
Domenici, Peter	R	NM SEN	$ 2,000	Sandman, Charles	R*	NJ 02	$ 1,500
Dowd, William F	R	NJ 03	$ 1,500	Saylor, John P.	R*	PA 12	$ 1,000

Esch, Marvin	R*	MI	02	$ 1,500	Schneebeli, Herman	R*	PA	17	$ 1,000
Eshleman, Edwin	R*	PA	11	$ 500	Shoup, Richard P.	R*	MT	01	$ 1,500
Goldwater, BarryJR	R*	CA	27	$ 2,500	Shuster, E.G.	R	PA	09	$ 500
Goodling, George	R*	PA	19	$ 500	Snider, Howard J.	R	CA	38	$ 3,000
Griffin, Robert	R*	MI	SEN	$ 3,000	Thompson , FletcherR		GA	SEN	$ 3,000
Hansen, Clifford P.	R*	WY	SEN	$ 3,000	Thurmond, Strom	R*	SC	SEN	$ 3,000
Harvey, James	R*	MI	08	$ 1,500	Tower, John G.	R*	TX	SEN	$ 3,000
Hawke, R. Jack	R	NC	04	$ 2,500	Veysey,Victor	R	CA	43	$ 1,000
Helms, Jesse	R	NC	SEN	$ 3,000	Ware, John H. III	R*	PA	05	$ 500
Hibbard, Henry S.	R	MT	SEN	$ 3,000	Williams, Lawrence	R*	PA	07	$ 500
Hirsch, Robert W.	R	SD	SEN	$ 3,000	Zwach, John M	R*	MN	06	$ 1,500

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TOTAL $110,000

MR. AND MRS. J. IRWIN MILLER COLUMBUS, IN . CHAIRMAN OF BOARD, CUMMINS ENGINE CO.

Blount, Winton M.	R	AL	SEN	$ 3,000	Lowenstein, Allard	L	NY	14	$ 1,500
Bohen, Fredrick	D	NJ	05	$ 1,000	McCloskey, Paul	R*	CA	17	$ 7,000
Brademas, John	D*	IN	03	$ 1,500	Mondale, Walter F.	D*	MN	SEN	$ 4,000
Case, Clifford	R*	NJ	SEN	$ 1,500	Percy, Charles H.	R*	IL	SEN	$ 6,000
Haaven, Jon	R	MN	07	$ 580	Ullman, Al	D*	OR	02	$ 1,000
Hamilton, Lee H.	D*	IN	09	$ 3,000	Young, Andrew	D*	GA	05	$ 2,000
Hatfield, Mark	R*	OR	SEN	$ 1,000					

TOTAL $33,080

[00149]

MR & MRS JOHN MULCAHY BRONXVILLE, NEW YORK FORMER PRES. QUIGLEY CO. (SUBSID. OF PFIZER INC.)

Gallagher, John T	R	NY	06	$ 2,000	Peyser, Peter	R*	NY	23	$23,000
Jackson, Laban	R	KY	06	2,000	Rogers, Paul	D*	FL	11	4,000
Langley,Jane	R	NY	18	2,000	Vergari, Carl	R	NY	24	17,000

TOTAL $50,000

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JAMES A. NOE MONROE, LOUISIANA RADIO & TV OWNER (FORMER GOVERNOR OF LOUISIANA)

Eastland, James	D*	MS	SEN	$ 2,000	McKeithen,John	IND	LA	SEN	$ 5,000
Goldwater, B. (Jr)	R*	CA	27	1,000	Toledano,Ben	R	LA	SEN	1,000
McClellan, John	D*	AR	SEN	12,000	Treen, David	R	LA	03	1,000

TOTAL $22,000

J.M. OLIN ST. LOUIS, MOSSOURI HON CHM BD - OLIN CORPORATION (INDUST. & AGRIC. CHEMICALS)

Abdnor, James	R	SD	02	$ 500	Hirsch, Robert	R	SD	SEN	$ 3,000
Armstrong, William	R	CO	05	500	Holt, Marjorie	R	MD	04	500

Bafalis, L.A.	R	FL	10	500	Huber, Robert	R	MI	18	500
Bartlett, Dewey	R	OK	SEN	3,000	Hudnut, William	R	IN	11	500
Beard, Robin	R	TN	06	1,000	Hunt, William	R	PA	20	500
Bloom, Allan	R	IN	04	500	Insco, Jack	R	FL	05	500
Blount, Winton	R	AL	SEN	3,000	Jackson, Laban	R	KY	06	500
Boggs, J. Caleb	R*	DE	SEN	3,000	Ketchum, William	R	CA	36	500
Boyd, Joseph	R	NY	01	2,000	Kidd, Bill	R	WY	01	500
Bray, William	R*	IN	06	1,000	Kyl, John	R*	IA	04	500
Burgener, Clair	R	CA	42	500	Langley, Jane	R	NY	18	500
Chafee, John	R	RI	SEN	3,000	Lott, Trent	R	MS	05	500
Conlan, John	R	AZ	04	1,000	McClure, James	R	IN	SEN	3,000
Cook, Rodney	R	GA	05	500	McKinney, Stewart	R*	CT	04	500
Cooper, John,Jr.	R	MO	02	1,000	Miller, Jack	R*	IA	SEN	3,000
Countie, David	R	MO	08	500	Moseley, James	R	MA	06	1,000
Dennis, David	R*	IN	10	500	Nunn, Louis	R	KY	SEN	3,000
Domenici, Pete	R	NM	SEN	3,000	Percy, Charles	R*	IL	SEN	5,500
Findley, Paul	R*	IL	20	2,000	Price, Robert	R*	TX	13	1,500
Funsch, Richard	R	MO	01	1,000	Scott, William	R	VA	SEN	3,000
Goldwater, B.,Jr.	R*	CA	27	3,000	Sloan, Russell	R	MO	06	500
Griffin, Robert	R*	MI	SEN	3,000	Symms, Steven	R	IN	01	500
Hanrahan, Robert	R	IL	03	500	Thompson, Fletcher	R	GA	SEN	1,000
Hansen, Clifford	R*	WY	SEN	3,000	Thurmond, Strom	R*	SC	SEN	3,000
Hawke, R. Jack	R	NC	04	1,500	Tower, John	R*	TX	SEN	3,000
Helms, Jesse	R	NC	SEN	3,000	Treen, David	R	LA	03	500
Hibbard, Henry	R	MT	SEN	3,000	Vergari, Carl	R	NY	24	500
					TOTAL				$83,000

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[00150]

MAX PALEVSKY LOS ANGELES, CALIFORNIA CHM XEROX DATA SYSTEMS

Anderson, William	D*	TN	06	$ 1,000	Helstoski,Henry	D*	NJ	09	$ 1,000
Burke, Yvonne B.	D	CA	37	10,000	Morse, Wayne L.	D	OR	SEN	10,000
Dow, John G.	D*	NY	26	1,000	Novak, Mark S.	D	CA	27	1,000
					TOTAL				$24,000

MRS. CHARLES S. (JOAN WHITNEY) PAYSON MANHASSET, NEW YORK
INVESTOR, OWNER N.Y. METS

495

Allott, Gordon	R	CO	SEN	$ 3,000	Hibbard, Henry S.	R	MT	SEN	$ 3,000
Baker, Howard H.	R*	TN	SEN	3,000	Hirsch, Robert W.	R	SD	SEN	3,000
Chafee, John H.	R	RI	SEN	5,000	Langley, Jane P.	R	NY	18	500
Cohen, William	R	ME	02	1,000	Lott, Trent	R	MS	05	3,000
Conlan, John B.	R	AZ	04	3,000	McClure, James A.	R	ID	SEN	3,000
Curtis, Carl T.	R*	NB	SEN	1,000	McKevitt, James D.	R*	CO	01	3,000
Dennis, David W.	R*	IN	10	3,000	Miller, Jack	R*	IA	SEN	3,000
Gilman, Benjamin	R	NY	26	3,000	Peyser, Peter A.	R*	NY	23	3,000
Griffin, Robert	R*	MI	SEN	4,000	Porteous, L. Robert	R	ME	01	1,000
Gustafson, Joel	R	FL	11	1,000	Snider, Howard J.	R*	CA	38	3,000
Hansen, Clifford	R*	WY	SEN	3,000	Tower, John G.	R*	TX	SEN	3,000
					TOTAL				$ 58,500

DR. & MRS. MARTIN PERETZ CAMBRIDGE, MASSACHUSETTS
HARVARD PROFESSOR

Badillo, Herman	D*	NY	21	$ 1,000	Kerry, John F.	D	MA	05	$ 2,092
Biden, Joseph R.	D	DE	SEN	2,500	Mezvinsky, Edward	D	IA	01	500
Brown, George E.	D	CA	38	1,500	Miller, Harold O.	D	VA	10	500
Burton, Philip	D*	CA	05	500	Morse, Wayne L.	D	OR	SEN	10,950
Camacho, Julian	D	CA	12	500	Schroeder, Patricia	D	CO	01	2,000
Dellums, Ronald	D*	CA	07	500	Sharp, Philip R.	D	IN	10	500
Dow, John G.	D*	NY	26	1,500	Studds, Gerry E.	D	MA	12	2,999
Drinan, Robert F.	D*	MA	04	1,000					
Holtzman, Elizabeth	D	NY	16	1,500					
Horowitz, Elaine	D	NY	04	3,503	TOTAL				$ 33,544

[00151]

MARY ETHEL PEW PHILADELPHIA, PENNSYLVANIA STOCKHOLDER (SUN OIL CO.)

Andrews, Mark	R*	ND	01	$ 500	Johnson, Albert W.	R*	PA	23	$ 500
Arends, Leslie C.	R*	IL	15	500	McClure, James A.	R	ID	SEN	500
Bartlett, Dewey	R	OK	SEN	1,000	Mills, William O.	R*	MD	01	500
Biester, Edward	R*	PA	08	500	Pearson, James B.	R*	KS	SEN	3,000
Blackburn, Ben B.	R*	GA	04	1,000	Pettis, Jerry L.	R*	CA	33	500
Boggs, J Caleb	R*	DE	SEN	1,000	Quillen, James H.	R*	TN	01	500
Brown, Garry	R*	MI	03	500	Saylor, John P.	R*	PA	12	500
Broyhill, James T.	R*	NC	10	1,000	Scherle, William J.	R*	IA	05	500
Buchanan, John H.	R*	AL	06	500	Schwengel, William	R*	IA	01	500
Chaffee, John H.	R	RI	SEN	2,000	Shriver, Garner E.	R*	KS	04	500
Curtis, Carl T.	R*	NB	SEN	500	Skubitz, Joe	R*	KS	05	500
Devine, Samuel L.	R*	OH	12	500	Snyder, M. Gene	R*	KY	04	1,000
Domenici, Peter	R	NM	SEN	1,000	Spence, Floyd D.	R*	SC	02	500
Eshleman, Edwin	R*	PA	16	500	Stevens, Ted	R*	AK	SEN	2,000
Findley, Paul	R*	IL	20	500	Thurmond, Strom	R*	SC	SEN	2,000
Ford, Gerald R.	R*	MI	05	500	Tower, John G.	R*	TX	SEN	2,000
Frey, Louis, Jr.	R*	FL	09	500	Wampler, William C.	R*	VA	09	500

Hewgley, James W.	R	OK	01	2,000	Ware, John H. III	R*	PA	05	500
Hirsch, Robert W.	R	SD	SEN	2,000	Williams, Lawrence	R*	PA	07	500
					TOTAL				$33,500

ESTATE OF J.N. PEW PHILADELPHIA, PENNSYLVANIA (SUN OIL CO)

Anderson, John B.	R*	IL	16	$ 500	Goodling, George	R*	PA	19	$ 500
Brotzman, Donald	R*	CO	02	1,000	McDade, Joseph M.	R*	PA	10	500
Duncan John J.	R*	TN	02	1,000	Rhodes, John J.	R*	AZ	01	500
Esch, Marvin L.	R*	MI	02	500	Ruth, Earl B.	R*	NC	08	500
Goldwater, Barry Jr	R*	CA	27	500					
					TOTAL				$ 5,500

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[00152]

W. CROCKER PEW PHILADELPHIA, PENNSYLVANIA DIRECTOR (SUN OIL CO.)

Arends, Leslie C.	R*	IL	15	$ 500	Pearson James B.	R*	KS	SEN	$ 1,000
Bartlett, Dewey F.	R	OK	SEN	3,000	Pettis, Jerry	R*	CA	33	500
Boggs, J. Caleb	R*	DE	SEN	1,000	Quillen, James H.	R*	TN	01	500
Curtis , Carl T.	R*	NB	SEN	500	Rhodes, John	R*	AZ	01	500
Domenici,Peter	R	NM	SEN	1,000	Saylor, John P.	R*	PA	12	500
Eshleman, Edwin	R*	PA	16	500	Scherle, William	R*	IA	05	500
Findley, Paul	R*	IL	20	500	Schwengel, Fred	R*	IA	01	500
Goodling, George	R*	PA	19	500	Shoup, Richard G.	R*	MT	01	500
Hansen, Clifford	R*	WY	SEN	2,000	Shriver, Garner	R*	KS	04	500
Hirsch, Robert W.	R	SD	SEN	1,000	Skubitz, Joe	R*	KS	05	500
Johnson, Albert W.	R*	PA	23	500	Steiger, Sam	R*	AZ	03	500
McClure, James W.	R	ID	SEN	500	Stevens, Ted	R*	AK	SEN	2,000
McCollister, John	R*	NB	02	500	Thurmond, Strom	R*	SC	SEN	1,000
McDade, Joseph M.	R*	PA	10	500	Tower, John G.	R*	TX	SEN	2,000
Minshall, William	R*	OH	23	500	Wampler, William	R*	VA	09	500
					TOTAL				$24,500

499

MESHULAM RIKLIS NEW YORK, NEW YORK CH BD RAPID AMERICAN CORP

Abourezk, James	D	SD	SEN	$ 500	Jacobs, Andrew	D*	IN	11	$ 500
Brademas, John	D*	IN	03	500	Mikva, Abner	D*	IL	10	500
Carey, Hugh L.	D*	NY	15	1,000	Reid, Ogden	D*	NY	24	5,000
Daniels, Jack	D	NM	SEN	1,500	Roncalio, Teno	D*	WY	01	500
Feeley, John M.	D	RI	01	500	Rooney, John J.	D*	NY	14	5,000
Fulton, Richard H.	D*	TN	05	500	Wolff, Lester	D*	NY	06	1,000
Hempelmann, John	D	WA	01	1,000	Young, Andrew	D	GA	05	5,000
Hungate, William	D*	MO	09	500					
					TOTAL				$23,500

JOHN W. ROLLINS WILMINGTON, DELAWARE
PRESIDENT, ROLLINS INTERNATIONAL, INC.

Bartlett, Dewey	R	OK	SEN	$ 1,000	Hinshaw, Andrew	R	CA	39	$ 3,000
Blount, Winton	R	AL	SEN	12,000	Percy, Charles	R*	IL	SEN	3,000
Cohen, William	R	ME	02	1,000	Thurmond, Strom	R*	SC	SEN	3,000
Domenici, Peter	R	NM	SEN	1,000	Towell, David	R	NV	01	1,000
DuPont, Pierre	R*	DE	01	3,000	Young, Edward	R	SC	06	500
					TOTAL				$ 28,500

[00153]

500

MR. AND MRS. CARROLL ROSENBLOOM, LOS ANGELES, CALIFORNIA
OWNER OF L. A. RAMS

Abourezk, James	D	SD	SEN	$ 2,000	Hathaway, William	D	ME	SEN	$ 2 000
Clark, Dick	D	IA	SEN	4,000	Huddleston, Walter	D	KY	SEN	2,000
Davis, William E.	D	ID	SEN	2,000	**Kelley, Frank**	D	MI	SEN	2,000
Droney, John L.	D	MA	SEN	3,000	Lowenstein, Al	LIB	NY	14	2,000
Galifianakis,Nick	D	NC	SEN	2,000	Pell, Claiborne	D*	RI	SEN	3,000
					TOTAL				$25,000

501

HOWARD E. SAFT**NEW YORK, NEW YORK OWNER, ADLAY JEWELRY

Anderson, William	D*	TN	06	$2,000	Jacobs, Andrew	D*	IN	11	$2,000
Bergland, Bob	D*	MN	07	1,000	Jones, Walter B.	D*	NC	01	800
Blanton, Ray	D	TN	SEN	2,000	Karth, Joseph E.	D*	MN	04	1,000
Brademas, John	D*	IN	03	1,500	Matsunaga, Spark	D*	HI	01	2,000
Burlison, Bill	D*	MO	10	2,000	Meeds, Lloyd	D*	WA	02	2,000
Carey, Hugh, L.	D*	NY	15	5,000	Melcher, John	D*	MT	02	1,000
Cotter, William	D*	CT	01	3,000	Mezvinsky,Edward	D	IA	01	1,000
Culver, John C.	D*	IA	02	1,000	Mikva, Abner	D*	IL	10	3,000
Evans, Frank E.	D*	CO	03	1,000	Murphy, John	D*	NY	17	1,000
Fornos, Werner	D	MD	04	1,000	Patterson, J.O.	D	TN	08	5,000
Fulton, Richard	D*	TN	05	2,000	Pike, Otis G.	D*	NY	01	1,000
Galifianakis,Nick	D	NC	Sen	1,500	Purcell, Graham	D*	TX	13	2,500
Giaimo, Robert N.	D*	CT	03	3,000	Roncalio, Teno	D*	WY	01	3,000
Grasso, Ella T.	D*	CT	06	3,000	Roy, William R.	D*	KS	02	5,000
Hanley, James	D*	NY	32	2,000	Runnels, Harold	D*	NM	02	1,000
Hansen, Julia	D*	WA	03	1,000	Shipley, George	D*	IL	22	1,000
Hathaway, William	D	ME	SEN	1,500	Smith, Neal	D*	IA	04	2,000
Hungate, William	D*	MO	09	1,000	Wolff, Lester	D*	NY	06	2,000
Ichord, Richard	D*	MO	08	1,000					
					TOTAL				71,500

** Contributors Goldblum, Saft and Weinberg channeled their donations through the National Committee for the Re-Election of a Democratic Congress (known as the Strauss Committee). They were allowed to designate (earmark the funds) the candidates receiving their money. It is not known of all the earmarked money actually went to each of the designated candidates.

[00154]

RICHARD MELLON SCAIFE — PITTSBURGH, PENNSYLVANIA — INDUSTRIALIST & FINANCIER

502

Allott, Gordon	R*	CO	SEN	$ 1,000	Lujan, Manuel	R*	NM	01	$ 1,000
Bafalis, L. A.	R	FL	10	500	Mailliard, William	R*	CA	06	1,000
Baker, Howard H.	R*	TN	SEN	1,000	Martin, James	R	NC	09	1,000
Bartlett, Dewey	R	OK	SEN	3,000	McAtee, Charles	R	KS	02	1,000
Beard, Robin L.	R	TN	06	1,000	McClure, James	R	ID	SEN	3,000
Chafee, John H.	R	RI	SEN	3,000	Miller, Jack	R*	IA	SEN	1,000
Cronin, Paul W.	R	MA	05	2,000	Robinson, Kenneth	R*	VA	07	500
Curtis, Carl T.	R*	NB	SEN	1,000	Schwengel, Fred	R*	IA	01	1,000
Domenici Pete	R	NM	SEN	3,000	Shuster, E.G.	R	PA	09	500
Ford, Gerald	R*	MI	05	2,500	Smith, Henry P. III	R*	NY	36	500
Griffin, Robert	R*	MI	SEN	5,000	Snyder, Howard J.	R	CA	38	1,000
Helms, Jesse I.	R	NC	SEN	3,000	Steele, Robert H.	R*	CT	02	1,000
Hibbard, Henry	R	MT	SEN	3,000	Talcott, Burt L.	R*	CA	12	500
Hirsch, Robert	R	SD	SEN	3,000	Thone, Charles	R*	NB	01	500
Huber, Robert	R	MI	18	500	Towell, David	R	NV	01	2,000
Hudnut, William	R	IN	11	1,000	Winn, Larry Jr.	R*	KS	03	500
Hunt, William R.	R	PA	20	3,000	Zwach, John M.	R*	MN	06	1,000
Kidd, Bill	R	WY	01	1,000					
Latta, Delbert	R*	OH	05	500				Total	$56,000
Lloyd, Sherman	R*	UT	02	1,000					

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WALTER SCHEUER — CHILMARK, MASSACHUSETTS — BUSINESS

Kerry, John	D	MA	05	$ 28,588	$28,588
				Total	$28,588

MR. AND MRS. JOSEPH SEGAL — MARION, PENNSYLVANIA — PRESIDENT, FRANKLIN MINT

Barrett, William	D*	PA	01	$ 2,561	Johnson, Albert	R*	PA	23	$ 2,055
Coughlin, Lawrence	R*	PA	13	1,048	Lowenstein, Allard	LIB	NY	14	18,725
Domenici, Pete V.	R	NM	SEN	2,850	McClure, James A.	R	ID	SEN	2,166
Eshleman, Edwin	R	PA	16	1,048	McDade, Joseph M.	R*	PA	10	1,030

Ford, Gerald	R*	MI	05	2,546	Saylor, John P.	R*	PA	12	2,105
Goodling, George	R*	PA	19	1,005	Schneebeli, Herman	R*	PA	17	1,048
Hatfield, Mark	R*	OR	SEN	2,032	Ware, John H. III	R*	PA	05	2,617
Hirsch, Robert W.	R	SD	SEN	2,903	Williams, Lawrence	R*	PA	07	1,000
							TOTAL		$46,739

[00155]

MR. AND MRS. NORTON SIMON LOS ANGELES, CALIFORNIA FORMER CHAIRMAN NORTON SIMON,INC

Allott, Gordon	R*	CO	SEN	$ 2,714	Hatfield, Mark O.	R*	OR	SEN	$ 4,832
Case, Clifford P.	R*	NJ	SEN	1,983	Hinshaw, Andrew J.	R*	CA	39	1,475
Chafee, John H.	R	RI	SEN	2,030	McCloskey, Paul	R*	CA	17	3,269
Domenici, Pete V.	R	NM	SEN	2,079	Percy, Charles H.	R*	IL	SEN	3,808
							TOTAL		$22,190

504

MPS. A. N. SPENCER CARRIZOZO, NEW MEXICO HOUSEWIFE

Domenici, Pete V.	R	NM	SEN	$25,000
			TOTAL	$25,000

W. CLEMENT STONE CHICAGO, ILLINOIS PRES COMBINED INSURANCE CO

Boggs,J. Caleb	R*	DE	SEN	$ 3,000	Percy, Charles H	R*	IL	SEN	$ 2,500
Griffin, Robert	R*	MI	SEN	2,500	Randolph,Jennings	D*	WV	SEN	2,412
Hirsch,Robert W	R	SD	SEN	500	Steelman, Alan	R	TX	05	500
Hoellen,John	R	IL	11	1,000	Young, Samuel	R	IL	10	10,400
McClure,James A.	R	ID	SEN	500					
							TOTAL		$23,312

MRS.MARGARET TOWSLEY ANN ARBOR,MICHIGAN HOUSEWIFE

505

Esch, Marvin L.	R*	MI	02	3,000	Griffin, Robert	R*	MI	SEN	$ 21,000
							TOTAL		$24,000

DE WITT & LILA ACHESON WALLACE PLEASANTVILLE, NEW YORK CHM READERS DIGEST & HOUSEWIFE

Bartlett, Dewey	R	OK	SEN	$ 2,000	Hibbard,Henry	R	MI	SEN	$ 2,000
Blount, Winton	R	AL	SEN	2,000	Hirsch,Robert W.	R	SD	SEN	1,000
Chafee,John H.	R	RI	SEN	2,000	McClure,James A.	R	ID	SEN	1,900
Domenici,Pete	R	NM	SEN	2,000	Nunn, Louis B.	R	KY	SEN	1,400

Goldwater, B. Jr.	R*	CA 27	1,000		Spence,Floyd D.	R*	SC 02	500
Griffin,Robert	R*	MI SEN	1,000		Thompson,Fletcher	R	GA SEN	1,000
Hansen,Philip	R	MN SEN	500		Tower,John G.	R*	TX SEN	2,880
Helms,Jesse I.	R	NC SEN	2,000					
					TOTAL			$23,180

[00156]

LAWRENCE WEINBERG,BEVERLY HILLS, CALIFORNIA, EXECUTIVE, LARWIN, CORP.**

Abourezk, James	D	SD SEN	$2,892		Johnson, Harold	D*	CA 02	2,000
Anderson, Glenn	D*	CA 35	1,900		Kelley, Frank J.	D	MI SEN	2,900
Biden, James R.	D	DE SEN	2,000		Leggett, Robert	D*	CA 04	2,000
Boas, Roger	D	CA 06	850		Lemucchi,Timothy	D	CA 36	2,900
Brooks, Jack	D*	TX 09	2,900		McFall, John J.	D*	CA 15	2,000
Burton, Philip	D*	CA 05	2,000		Metcalf, Lee	D*	MT SEN	2,900
Camacho, Julian	D	CA 12	850		Mondale, Walter	D*	MN SEN	2,900
Corman, James C.	D*	CA 22	2,000		Morse, Wayne L.	D	OR SEN	5,800
Daniels, Jack	D	NM SEN	2,900		Moss, John E.	D*	CA 03	2,000
Danielson, George	D*	CA 29	2,000					
Davis, William E.	D	ID SEN	2,000		Nunn, Sam	D	GA SEN	2,900
Dellums, Ronald	D*	CA 07	2,000		Randolph,Jennings	D*	WV SEN	2,900
Edmondson, Ed	D	OK SEN	2,900		Rees, Thomas	D*	CA 26	2,000

Edwards, Don	D*	CA 09	2,000		Roybal, Edward	D*	CA 30	2,000
					Sanders, Barefoot	D	TX SEN	2,000
Galifianakis,Nick	D	NC SEN	2,000		Sisk, B.F.	D*	CA 16	1,900
Hanna, Richard	D*	CA 34	2,000		Spaekman, John	D*	AL SEN	2,900
Hawkins, Augustus	D*	CA 21	2,000		Spong, William	D*	VA SEN	1,995
Holifield, Chet	D*	CA 19	2,000		VanDeerlin,Lionel	D*	CA 41	1,900
Huddleston,Walter	D	KY SEN	2,000		Waldie, Jerome	D*	CA 14	2,000
					TOTAL			87,087

** Contributors Goldblum, Saft and Weinberg channeled their donations through the National Committee for the Re-Election of a Democratic Congress (Known as the Strauss Committee). They were allowed to designate (earmark the funds) the candidates receiving their money. It is not known if all the earmarked money actually went to each of the designated candidates.

119. Analysis to Contributors to the Finance Committee to Re-Elect the President

Attached is the Common Cause identification of contributors disclosed in the report filed September 28, 1973 by the Finance Committee to Re-elect the President. The report was ordered filed by Judge Joseph Waddy of the U.S. District Court for the District of Columbia in Connection with a Common Cause lawsuit.

Pages 2-7 Identification of contributors $40,000 and above.

Pages 8-17 Identification of contributors $10,000 - $39,000.

Pages 18 - 24 Identification of contributors $5,000 - $9,999. The dollar amount set forth for each listed donor in the *right corner* represents the amount given for the total reporting period (January 1, 1971 - April 6, 1972). The figure in the *left corner* represents the amount given prior to March 10, 1972, and already made public. If there is no figure in the left hand corner, then the amount in the right corner is the total given during the previously secret period of March 10, 1971, to April 6, 1972.

The letter "c" next to the amount means it was a cash contribution. A husband and wife's joint gift has been listed under the husband's occupation.

CONTRIBUTIONS ABOVE $40,000

1/1/71 TO 3/10/72		1/1/71 TO 4/6/72
	Robert Allen Pres Gulf Resources & Chemical Corp Houston, TX STATE CHM, FIN CRP	$100,000 c (returned)
	Walter Annenberg Ambassador to England Philadelphia Publisher	$250,000
	Employees of American Airlines New York, NY	*$75,000 c ($55,000 returned)
	*$20,000 from George Spater former Chm Bd.	

1/1/71 TO 3/10/72		1/1/71 TO 4/6/72
	William Burden Gen Ptnr Wm A.M. Burden & Co (Investment Bnkg) New York, NY	$97,895
$60,000	Citizens for Good Government LTV Corp Employees (Aerospace) Dallas, TX	$60,000
	Henry Crown Chm Bd Henry Crown & Co Chicago, IL	$50,819 ($25,000 c)

	Theodore Ashley Chm & Pres Warner Bros (Records, motion pictures) New York, NY	$137,056		Nathan Cummings Hon Chm Consolidated Foods Corp Chm Bd Ass. Products Inc (Mnfr & Wholesale Food) New York, NY	$44,356
	Orin Atkins Chm Bd Ashland Oil Ashland, KY	$100,000 c (returned to Ashland oil)		Theodore Cummings Beverly Hills, CA	$46,407
$2,000	Loren Berry Chm L.M. Berry & Co. (Tel directory advertising) Dayton, OH	$102,000		Brownlee Currey, Jr Sr VP Equitable Securities Morton (Investment Bnkg) New York, NY	$74,195
$25,000	Elmer Bobst Hon Chm Warner-Lambert Pharmaceutical Co Morris Plains, NJ	$100,000		Shelby Davis Ambassador to Switzerland former Ptnr, Shelby, McCollum & Davis (Investment bnkg)	$100,000
	Employees of Braniff Airways Dallas, TX *$5,000 from H. L. Lawrence *$5,000 from C. E. Acker	*$50,000	$1,000	Christian de Guigne Chm Bd Stauffer Chemicals Co (Industrial chemicals & fertilizers) San Francisco, CA	$107,830
	E. W. Brown, Jr Chm Bd Gulfport Shipbldg Co Port Arthur, TX	$150,000	$28,000	Vincent de Roulet Ambassador to Jamaica	$50,000 ($22,000 c)

SOURCE: COMMON CAUSE CAMPAIGN FINANCE MONITORING PROJECT

1/1/71 TO 3/10/72		1/1/71 TO 4/6/72	1/1/71 TO 3/10/72		1/1/71 TO 4/6/72
	Frederick L Ehrman Chm Exec Comm Lehman Corp (Investment Bkng) New York, NY	$ 69,357	$25,000	Albert F. Gordon VP Albert H. Gordon CHM Kidder Peabody & Co (Stockbrokers) New York, NY	$99,873

	Harvey Firestone, Jr Retired Chmn & Pres Firestone Tire & Rubber Akron, OH	$48,712		Kingdon Gould, Jr Ambassador to the Netherlands Ptnr, PMI, Inc (Parking lots) Washington, D.C.	$100,000
$100,000	Leonard Firestone Chm Bd Firestone Tire & Rubber Co of California Los Angeles, CA	$100,000	$170,000	Raymond R. Guest (former ambassador to Ireland) Horse breeder King George, VA	$200,000
	Raymond Firestone Chm Bd Firestone Tire & Rubber Co Akron, Oh	$63,441		Employees of Gulf Oil Corp Pittsburgh, PA	$100,000 c (returned)
	Max M. Fisher Chm Bd Fisher-New Center Co (Real Estate) Detroit, MI CO-CHM, FIN CRP	$125,000		Walter A. Haas Hon Chm Levi Strauss & Co San Francisco, CA	$48,557
				Armand Hammer Chm & CEO Occidental Petroleum Los Angeles, CA	$46,000 c

	Mrs. Edsel B. Ford Grosse Pointe, MI	$50,000		Bob Hope Entertainer North Hollywood, CA	$50,000
	Henry Ford II Chm Bd Ford Motor Co	$49,776		Howard Hughes 1700 Pennsylvania Ave, N.W. Washington, D.C.	$50,000
	Thomas Ford Investments Self-employed New York, NY	$50,000	$100,000	John P. Humes Ambassador to Ireland	$100,000
$50,000	J. Paul Getty Pres Getty Oil Los Angeles, CA	$75,000	$50,000	John N. Irwin II Ambassador to France	$50,000
	Employees of Goodyear Tire & Rubber Akron, OH	$40,000 c (returned)		Marion W. Isbell Chm & CEO Ramada Inns (Motels, restaurants) Phoenix, AZ	$41,241

SOURCE: COMMON CAUSE CAMPAIGN FINANCE MONITORING PROJECT

1/1/71 TO 3/10/72		1/1/71 TO 4/6/72	1/1/71/TO 3/10/72		1/1/71/TO 4/6/72
	Thomas V Jones Chm Bd & Pres Northrop Corp Aerospace) LA,CA	$40,000		J. Willard Marriott Sr. Chm Bd Marriott Corp Washington, D.C.	$ 67,069
$27,117	Willard W. Keith Pres Marsh, McLennan- Cosgrove & Co (Insurance brokers) Los Angeles, CA	$56,606	$48,505	Anthony D. Marshall Ambassador to Trinidad	$48,505
	Peter Kiewit Pres Peter Kiewit & Sons (General contractors & heavy construction) Omaha, NB	$100,912		Jack Massey Chm Bd Hospital Corp of America (Owns and runs hospitals) Nashville, TN	$250,000
				Mrs. Abby R. (Rockefeller) Mauze New York, NY	$50,000

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	Robert Kleberg Pres King Ranch Inc (Ranch, crude petro- leum & nat gas) Kingsville, TX	$100,000		Lewis Maytag Chm & CEO National Airlines Miami, FL	$50,000
	Lester B. Knight Chm Lester B. Knight & Assoc (Construction & engineering Chicago, IL	$50,000		H.W. McCullum Chm Exec Comm amerada Hess Corp (Crude oil & nat gas) New York, NY	$42,000
	William Lasdon Chm & CEO Warner-Lambert Pharmaceurical CO NY,NY	$40,000		William McKnight Hon Chm Bd Minnesota, Mining & Mnfg. Co (3 M Company) St. Paul, MN	$100,191
$46,122	Gustave Levy Gen Ptnr Goldman Sach & Co (Investment Bnkg) CO-CHM, FIN CRP	$70,442		Andre Meyer Gen Ptnr Lazard Freres Co Investments) New York, NY	$90,000

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	Lawrence Lewis, Jr Chm Bd Flagler System (Hotels) Richmond, VA ST CHM, FIN CRP	$90,000		Joseph Meyerhoff Chm Bd Monumental Properties Inc (Real estate dev - shopping center) Baltimore, MD	$104,848
	Nathan Lipson Pres Venture Industries Inc (Mnfr carpets) Atlanta, GA	$98,120		Otto Miller & Assoc Chm Standard Oil of CA San Francisco, CA	$50,000
				Seymour Milstein Bldg material mfgr Scarsdale, NY	$65,000

SOURCE: COMMON CAUSE CAMPAIGN FINANCE MONITORING PROJECT

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1/1/71 TO 3/10/72		1/1/71 TO 4/6/72	1/1/71 TO 3/10/72		1/1/71 TO 4/6/72
	Roger Milliken Pres Deering Milliken Inc (Textiles) Spartanburg, SC	$84,000	$70,572	Thomas Pappas Pres, Pappas Co Inc (Food & liquor importers) Chm, Esso Pappas Refinery, Greece Boston MA CO-CHM, FIN CRP	$100,673
	John Moran Chm Bd Hycel Inc (Mfr med chemicals & laboratory equip) Houston, TX	$101,008	$80,000	Mrs. Chas. S. Payson (Owner, New York Mets) New York, NY	$80,000
$255,000	John A. Mulcahy Pres Quigley Co (Steel furnace subsidiary of Pfizer Inc - pharmaceuticals Bronxville, NY	$573,559		George Pfleger Dir Emerson Electric Co Newport Beach, CA	$47,088
				Employees of Phillips Petroleum Bartlesville, OK	$100,000 C (returned)

517

	Clint and John Murchison Oil Producers, Owners, Dallas Cowboys Dallas, TX	$50,000 c	$51,000	Mrs. Lillian Phipps (Widow of investment banker) New York, NY CO-CHM, FIN CRP	$51,000
$100,000	John M. Olin Hon Chm Olin Corp (Indust & agric chemicals) New York, NY	$100,000		Louis F. Polk, Jr former VP General Mills, Inc New York, NY REG CHM, FIN CRP	$49,211
	Spencer T. Olin Dir & former 1st VP Olin Industries (Indus & agric chemicals) St. Louis, MO	$94,513	$50,000	Valere Blaire Potter (Ties with oil industry through Justin Potter Foundation, a major stockholder in Mobil Oil) Nashville, TN	$50,000
	Florenz Ourisman Florenz R. Investment Co (Real estate dev) Washington, D.C.	$150,000		Meshulam Riklis Chm Bd & Pres Rapid American Corp (Mfr men's clothing, family products) New York, NY	$50,000

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	David Packard Chm Bd Hewlett-Packard Co (Mfr electronics defense contractor) Palo Alto, CA	$51,000		John D. Rockefeller Hon Chm Rockefeller Foundation New York, NY	$50,000

SOURCE: COMMON CAUSE CAMPAIGN FINANCE MONITORING PROJECT

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[00163]

1/1/71 TO 3/10/72		1/1/72 TO 4/6/72	1/1/71 TO 3/10/72		1/1/71 TO 4/6/72
	Laurence Rockefeller Chm Rockefeller Brothers Fund Inc New York, NY	$50,000		Howard Stamper Chm Bd Banquet Foods Corp St. Louis, MO	$46,807
	Nelson Rockefeller Governor, New York State	$50,000	$117,822	Jules Stein Chm Bd Music Corp of America (Phonograph records) Los Angeles, CA	$117,822

John W. Rollins $245,024
Pres
Rollins International Inc
(Conglomerate - TV broadcasting, trucking)
Greenville, DE
CO-CHM, FIN CRP

John H. Safer $250,000
(Real estate, apartment builder, shopping center owner)
Bethesda, MD

Henry Salvatori $99,415
Chm & Pres
Grant Oil Tool Co
(Oilwell speciality drilling tools)
Los Angeles, CA

$800,000 Richard Scaife $1,000,000
(Heir to Mellon fortune - Gulf Oil & Mellon banking)
Pittsburgh, PA

Saul Steinberg $250,000
Chm & CEO
Leasco Corp
(Computer services)
Great Neck, NY

George Steinbrenner $75,000
Chm & CEO
American Shipbuilding Co
Cleveland, OH

James E. Stewart $50,000 c
Chm Bd
Lone Star Industries
Greenwich, CT

$1,000,000 W. Clement Stone $2,000,000
Chm & CEO
Combined Insurance Co. of America
Evanston, IL

$66,102 Taft Schreiber $66,102
VP
Music Corp of America
(Phonograph records)
Los Angeles, CA
CO-CHM, FIN CRP

C. Arnholt Smith $200,000
Chm. Bd (returned)
Westgate Calif. Corp.
(Food, trans, real estate & insurance)
Chm & Pres U.S. Nat'l Bank
San Diego, CA

$244,000 Kent H. Smith $244,000
ret Chm
Lubrizol
(Mfr chemicals & additives for lubricants & fuels)
Gates Mill, OH

J. Fife Symington $50,000
Lutherville, MD

$187,500 TAPE $187,500
(Associated Milk Producers Inc)
San Antonio, TX

Daniel J. Terra $250,000
Chm & Pres
Lawter Chemicals
(Printing, synthetic resins)
Kenilworth, IL

Charles Thornton $48,116
Chm Bd
Litton Industries
Los Angeles, CA

SOURCE: COMMON CAUSE CAMPAIGN FINANCE MONITORING PROJECT

1/1/71 TO 3/10/72		1/1/71 TO 4/6/72	1/1/71 TO 3/10/72		1/1/71 TO 4/6/72
	Robert L. Vesco Chm & CEO International Controls Corp Fairfield, NJ	$200,000 c (returned)			
$100,000	Elisha Walker, Jr (Investments heir) New York, NY	$100,000			
$100,000	Dewitt Wallace (Founder, Reader's Digest) Mt. Kisco, NY	$100,000			
	J.L. Warner (Motion picture executive) Los Angeles, CA	$100,000			
	Gene M. Washburn Corona del Mar, CA	$50,000			

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$300,000	Arthur K. Watson (former Ambassador to France & former Chm Bd, IBM World Trade Corp) New Canaan, CT	$300,000			
	Ray A. Watt Chm Bd Watt Industries Los Angeles, CA	$86,568			
	Cornelius V. Whitney Pres Whitney Ind New York, NY	$300,000 ($250,000 returned)			
	Jack Wrather Founder & Chm Wrather Corp (Disneyland Hotel, Lassie, Vacationland & Muzak Div) Beverly Hills, CA	$84,060			
	Toddie Wynne Pres American Liberty Oil Co. Dallas, TX	$50,000			

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CONTRIBUTIONS BETWEEN $10,000 AND $39,999

1/1/71 TO 3/10/72		1/1/71 TO 4/6/72
$15,000	ADEPT (Mid-America Dairymen Inc) Springfield, MO	$15,000
	Ralph M. Adler Executive Amerada Hess Corp New York, NY	$39,000
	Herbert Allen Ptnr, Allen & Co (Investment Banking) New York, NY	$15,000
	James Allen VP & Asst to Pres Northrop Corp (Aerospace) Los Angeles, CA	$20,000
$100	Mrs. Gordon (Maxy Pope) Alles San Marino, CA	$15,100
	Dwayne Andreas Chm Exec Comm Archer-Daniels Midland Co (Soybeans) Minneapolis, MN	$25,000 c
$1000	Isaac Arnold Dir Cullen Center Bank & Trust Houston, TX	$11,000
** (Isaac Arnold, Jr. - see pg. 9)		
$500	Roy Ash Director Office of Management & Budget (OMB) former Pres, Litton Ind Washington, DC	$20,500

1/1/71 TO 3/10/72		1/1/71 TO 4/6/72
	Perry Bass Chm Bd Sid Richardson Carbon Gas Co (Butane, propane & nat gas) Fort Worth, TX	$20,000 c
	Walter R. Beardsley Chm Miles Laboratories, Inc (Pharmaceuticals) Elkhart, In	$10,000
$9,000	MacDonald Beckett Pres Welton Becket & Assoc (Architects) Los Angeles, CA	$12,000
	Leo Berger Pres Avon Steamship Co Lake Success, NY	$10,000 c
	George F. Berlinger Welfare Inspector General New York State	$25,000
	Philip Block, Jr Chm Exec Comm Inland Steel Co Chicago, IL	$10,000
$5,000	Joseph Bogdanovich Pres & Dir Star-Kist Foods Inc San Pedro, CA	$30,000
	Beverly A. Bogert Investor Self-employed New York, NY	$10,000

Bruce Baker $18,000
Jericho, NY

Alexander Barket $25,000
Chm & Pres
Civic Plaza Nat'l Bank
Kansas City, MO

David Bradshaw $15,000
Attorney
Bradshaw, Speranza,
Ververka & Brumlick
Chicago, IL

SOURCE: COMMON CAUSE CAMPAIGN FINANCE MONITORING PROJECT

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1/1/71 TO 3/10/72		1/1/71 TO 4/6/72	1/1/71 TO 3/10/72		1/1/71 TO 4/6/72
	Albert Broccoli Producer James Bond spy movies London, England	$10,000		Neil Carothers III Washington, DC	$30,075
	Margaret M. Brock Exec V Chm Republican Nat'l Finance Comm Los Angeles, CA	$21,000	$25,000	Henry Catto, Jr Ambassador to El Salvador	$25,000

Isaac Arnold, Jr $10,000
Dir
Cullen Center Bank
& Trust
Houston, TX

August Busch III $13,317
Exec VP
Anheuser-Busch
(Beer)
St. Louis, MO

John Christo, Jr $33,400 c
Chm
Bay Nat'l Bank & Trust
Panama City, Fl

Hugh Close $24,000
Chm
Spring Mills Inc
(Textiles)
Fort Mill, SC

Donald Comer, Jr $15,000
Pres & CEO
Avondale Mills
(Textiles)
Sylacauga, AL

Peter Constas $10,000 c
Exec
Avon Steamship Co
Lake Success, NY

Charles Cook $12,000
Owner
Cook Bros
Industry, CA

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J.D. Callender Exec VP & Tr Amerada Hess Corp (Crude oil & refining) New York, NY	$12,000				
B. Gerald Cantor Chm & Pres Cantor Fitzgerald & Co (Investment Bnkg) Beverly Hills, CA	$10,000				
Edward Carlson Pres United Airlines Prospect, IL	$23,452				
Oliver C. Carmichael, Jr. Chm Bd, Assoc Corp of N A (Subsid of Gulf & Western Industries) South Bend, IN CO-CHM, FIN CRP	$19,166	$1000			
			G. Bradford Cook Former Chm Securities & Exchange Comm (SEC), Wash.,D.C.	$10,000	
			Mrs. Juanita Cooper Greenville, SC	$15,000	
			Harry Cullen (Oil operator) Dir Cullen Center Nat'l Bank Houston, TX	$10,000	
			Roy Cullen Oil operator Houston, TX	$11,000	

SOURCE: COMMON CAUSE CAMPAIGN FINANCE MONITORING PROJECT

1/1/71 TO 3/10/72	1/1/71 TO 4/6/72	1/1/71 TO 3/10/72	1/1/71 TO 4/6/72
Justin Dart Chm & Pres Dart Industries (Pharmaceuticals, hospital supplies, plastics & glass) Los Angeles, CA	$25,993	John Dorrance Chm Bd Campbell Soup Co Camden, NJ	$34,800
J. Morton Davis Gen Ptnr D.H. Blair & Co (investments) New York, NY	$10,000	Jack A. Drown Drown News Agency Westminster, CA	$25,000
Donald Dayton Dir Dayton-Hudson Corp Minneapolis, MN ST CHM, FIN CRP	$10,640	Reynolds duPont Consultant Wilmington, DE	$36,000
		C.W. Durham Chm Bd & Pres Great Plains Natl Gas Co (Nat gas distr) Omaha, NB	$10,000

	Henry Dekker Spartanburg, SC	$10,000		James A. Elkins Attorney Vinson, Elkins, Searls, & Connally Houston, TX	$15,000 c
	Frederick Dent former Pres & Tr Mayfair Mills (Textiles) Arcadia, SC SECRETARY OF COMMERCE	$10,500		Joseph T. Farland former Ambassador to Iran	$10,000
	C. Douglas Dillon former Secretary of Treas (Investment Bnkg) New York, NY	$24,000		Al Fay VP Bel Oil Corp Lake Charles, LA Member Republican Nat'l Comm from Texas	$30,242
	John C. Donnell Pres Marathon Oil (oil & nat gas) Findlay, OH	$14,000	$500	William H.G.Fitzgerald Stockbroker Hornblower, Weeks, Hemphill, Noyes Washington, DC STATE CHM, FIN CRP	$25,500
$2,000	Gaylord Donnelley Chm Bd PR Donnelley & Sons Co (Printing & Lithography) Libertyville, IL	$25,883			

	Margaret H. Donner Colorado Springs, CO	$24,000
	Robert Donner, Jr Administrator, trust funds Woodman Land Co Colorado Springs, CO	$25,000

SOURCE: COMMON CAUSE CAMPAIGN FINANCE MONITORING PROJECT

[00168]

1/1/71 TO 3/10/72		1/1/71 TO 4/6/72	1/1/71 TO 3/10/72		1/1/71 TO 4/6/72
$10,000	Helen Clay Frick (Daughter, Henry Frick) Pittsburgh, Pa	$10,000		R.V. Hansberger Pres Boise Cascade Corp (Forest products) Boise, ID	$20,000
$10,000	Richard L. Gelb Pres Bristol-Myers (Pharmaceuticals & cosmetics) New York, NY	$10,000			

Sumner Gerard $38,867
USAID, Tunisia

David Grainger $25,000
Chm Bd
W.W. Grainger Inc
(Mnfr electrical pumbs
& supplies)
Chicago, IL

W.W. Grainger $25,000
Dir
W.W. Grainger Inc
Chicago, IL

Cecil Green $24,692
Dir
Texas Instruments
(Electronics)
Dallas, TX

Edward H. Hamm $24,000
Chm & VP
Northland Co
(Insurance)
St. Paul, MN

Jake Hamon $25,000 c
Oil & gas producer
Dallas, TX

Marco Hellman $25,000
V Chm & Cir
Dean Witter & Co
(Securities)
San Francisco, CA

Harry Helmsley $10,000
New York, NY

James Hemphill $25,000
Gen Ptnr Goldman
Sachs & Co.(Invest.
Bnkg) Chicago,IL

Maurice Greenberg $15,000
Pres & CEO
American International
Group Inc (Insurance sub.
& reinsurance)
New York, NY

Max Greenfield $24,000
Attorney
Greenfield & Stein
New York, NY

Patrick E. Haggerty $13,798
CEO
Texas Instruments
(Electronics)
Dallas, TX

Leon Hess $10,000
Chm & CEO
Amerada Hess Corp
(Crude oil & refinery)
New York, NY

William Hewlett $18,000
Pres & CEO
Hewlett-Packard Co
(Electronics)
Palo Alto, CA

Joseph Hirshhorn $25,000 c
Chm Bd
Callahan Mining Corp
(Silver & copper)
New York, NY

Mrs. Frances E. Hoffman
$15,847
(Wife of Founder)
Hoffman Electronics Corp
Los Angeles, CA

SOURCE: COMMON CAUSE CAMPAIGN FINANCE MONITORING PROJECT

1/1/71 TO 3/10/72		1/1/71 TO 4/6/72
	Wayne Hoffman Chm Flying Tiger Corp (Charter airline) Los Angeles, CA	$30,000 c
	John Howland Pr & CEO Westpoint Pepperell Inc (Fabrics) Westpoint, GA	$10,000
	Hadlai Hull Attorney Asst Secretary of the Army	$15,451
	Jaquelin Hume Chm Bd American Potato Co	$10,000
	Chm Bd, Basic Vegetable Products (Mnfr dehydrated vegetables) San Francisco, CA	
$1000	Arthur E. Johnson Retired Chm Midwest OIl Co Dir United Banks of Colorado Denever, CO	$13,000
	Howard Johnson Pres & CEO Howard Johnson Co (Restrarant chain) New York, NY	$15,000
	J.E. Jonsson Hon Chm Texas Instruments (Electronics) Dallas, TX	$26,013

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1/1/71 TO 3/10/72		1/1/71 TO 4/6/72
	Howard Keck Pres Superior Oil Co (Crude oil & nat gas) Houston, TX	$10,000
	Robert Kogod Pres Charles E. Smith (Real Estate) Washington, DC	$10,000
	Cal Kovens Pres Kovens Construction Co Miami, FL	$30,000 c
	Philip Kramer Pres Amerada Hess Corp (Crude oil & refining) New York, NY	$12,000
	Theodore Law Chm Falcon Seaboard Inc (Holding co, oil exploration) Houston, TX	$14,000
	Cyrus Lawrence Cyrus J. Lawrence & Sons (Stockbrokers) New York, NY	$12,000
	Lawrence Leeds White Plains, NY	$18,000
	Samuel LeFrak Pres LeFrak Organization (Real estate) New York, NY	$24,910

Earle M. Jorgensen $25,000
Chm & CEO
Earle M. Jorgensen Co
(Seel & aluminum prod)
Los Angeles, CA

Saul Kahan $18,000
Accountant
Nathan Tannenbaum & Co
New York, NY

Wm C Liedtke Jr Pres $23,348
Pennzoil United, Inc
(Oil,gas explor,mining)
Houston, TX
REG CHM, FIN CRP

F. W. Lloyd $15,000
Sen VP
Northrop Corp
(Aerospace)
Los Angeles, CA

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SOURCE: COMMON CAUSE CAMPAIGN FINANCE MONITORING PROJECT

[00170]

1/1/71 TO 3/10/72		1/1/71 TO 4/6/72	1/1/71 TO 3/10/72		1/1/71 TO 4/6/72
$10,000	Henrietta J. Louis Chicago, IL	$10,000	$22,000	Jeremiah Milbank, Jr Chm Bd Commercial Solvents (Mfr chemicals, industrial gasses, pharmaceuticals & explosives) New York, NY CO CHM, FIN CRP	$22,000
$5,000	John J. Louis, Jr Chicago, IL	$22,034			
	E.A.G. Manton Chm & Dir American International Group Inc (Insurnace, subs. reinsurance) New York, NY	$10,000	$22,000	Jeremiah Milbank, Sr (Retired, father of Jeremiah Jr) Greenwich, CT	$22,000
	Eugene McDermott Dir Texas Instruments (Electronics) Dallas, TX	$26,013		Paul Miller Chm Bd Pacific Lighting Corp. (Natural Gas) Los Angeles, CA	$25,000

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$1,000	James S. McDonnell Chm McDonnell-Douglas Corp (Aerospace) St. Louis, MO	$21,670		Employees of Minnesota Mining & Mfg-3M St. Paul, MN	$30,000c (returned)
	E.S. McKissick, Jr Pres Alice Mnfg Co (Textiles) Easley, SC	$15,000		Charles Mitchell & Associates Former Chm Bd Cities Service New York, NY	$28,000 c
	Frank McMahon Racing stables owner Palm Beach, FL	$10,000		Walter Montgomery Chm & CEO Spartan Mills (Textiles) Spartanburg, SC	$20,000
$32,000	Paul Mellon (Member Mellon family - Gulf Oil, Mellon Bank, etc) Upperville, VA	$32,000		Robert Mosbacher (Oil operator) Houston, TX Chm, Republican National Finance Committee	$24,675
	Spyros Metaxa Athens, Greece	$10,000			

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	Richard Meyer Pres Anheuser-Busch (Beer) St. Louis, MO	$13,316		Hugh Neuhaus Houston, TX	$14,575

SOURCE: COMMON CAUSE CAMPAIGN FINANCE MONITORING PROJECT

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1/1/71 TO 3/10/72		1/1/71 TO 4/6/72	1/1/71 TO 3/10/72		1/1/71 TO 4/6/72
	Arthur C. Nielsen Chm Bd A.C. Nielsen Co (Ratings/Market research) Chicago, IL	$30,000		W. Crocker Pew (Stockholder, Sun Oil Co) Philadelphia, PA	$30,000
	Ramon Nolan Queson City Philippines	$25,000		Robert Pike Sec Crocker Nat'l Bnk San Francisco, CA	$10,000

Robert Paliafito $30,111
Pres
National Health Enterprises
Milwaukee, WI

Potter Palmer $10,071
Chm
Globe Trotter
Communications
Chicago, IL

Tudie Patti $25,000
V Chm Bd
Civic Plaza Nat'l Bank
Kansas City, MO

Edwin Pauley $35,000
Chm Bd
Pauley Petroleum Inc
Los Angeles, CA

Jeno Paulucci $25,000
Chm Bd
Cornelius Co
(Beverage vending & dispensing equipment)
Duluth, MN

Thomas Pike $24,457
V Chm
Fluor Corp
(Heavy construction)
Los Angeles, CA

Pillsbury, Madison & Sutro
Attorneys $10,000
San Francisco, CA

Jules Posner $18,000
Great Neck, NY

James R. Price $18,175
Chm Bd
National Homes Corp
(Mfrd & industrialized homes)
Lafayette, IN

William Wood Prince $25,000
Pres
F.H. Prince & Co
Chicago, IL

$12,000

Miss Amelia Peabody $10,000
Boston, MA

Edward Petrillo $10,000
Pres & Tr
Yonkers Contracting Co Inc
Yonkers, NY

Miss Ethel Pew $30,000
(Stockholder, Sun Oil Co
Philadelphia, PA

Robert J. Quinn $12,000
Gen Ptnr Salomon Bros
(invest Bnkg)
New York, NY

1972 DC Republican $20,000
Dinner
Washington, DC

Robert Reynolds $25,000
Pres & Dir
Golden West Broadcasters
(California Angels)
Los Angeles, CA

SOURCE: COMMON CAUSE CAMPAIGN FINANCE MONITORING PROJECT

1/1/71 TO 3/10/72		1/1/71 TO 4/6/72	1/1/71 TO 3/10/72		1/1/71 TO 4/6/72
	Julian H. Robertson, Jr VP Kidder Peabody (Investments) New York, NY	$26,582		James Self Pres Greenwood Mills (Textiles) Greenwood, SC	$18,000
	Willard Robertson Pres Willard E. Robertson (Ret & whls autos) New Orleans, LA St CHM, FIN CRP	$10,000		Mrs. Evelyn Sharp (real estate, self employed) New York, NY	$16,377
542			$15,000	William E. Simon Gen Ptnr Salomon Bros. (investment banking) New York, NY	$15,000
$39,000	Peter B. Ruffin Galbreath-Ruffin Corp (Real estate - speciality offices and office bldgs) New York, NY	$39,000			
	Adolph Rust A.H. Rust & Co New York, NY	$20,000		Robert Six Pres Continental Airlines Los Angeles, CA	$15,000
	Kerby Saunders Inc (Mech contrac) New York, NY	$10,000		Charles Smith Chm Bd Charles E. Smith Co (real estate & construction) Washington, DC	$15,000
	D.J. Schaffer Great Neck, NY	$18,000		Gloria Smith Greenwood SC	$18,000
$15,000	John Schiff Ptnr Kuhn Loeb & Co. (Investment Banking) New York, NY	$15,000		Robert Smith Pres Charles E. Smith Co (Real estate & construction) Washington, DC	$10,000
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	John Schuler Chm Anderson Electric Co Leeds, AL STATE CHM, FIN CRP	$17,018		William Smith Dir, Pacific Lighting Corp, Pacific Mutual Life & Crocker National Corp San Marino, CA	$10,000
$1000	Joseph Segel Chm, Pr & CEO The Franklin Mint (Coins, metals, ingots) Franklin Center, PA	$10,000	$20,000 $10,000	SPACE (Dairymen, Inc) Louisville, KY	$30,000

1/1/71 TO 3/10/72		1/1/71 TO 4/6/72	1/1/71 TO 3/10/72		1/1/71 TO 4/6/72
	Mrs. William N. Spenser, Jr Mill Valley, CA	$24,000		Robert Vance Pres & Dr Clinton Mills (Textiles) Clinton, SC	$12,000
	Whitney Stone Chm Bd & Dir Stone & Webster Inc (Management consultants) New York, NY	$21,000	$15,000	Nicholas Varvinoganis (oil refining & shipping) Athens, Greece	$15,000
$18,000	Vernon Stouffer Chm Litton Industries Food Services Group Stouffer Foods Corp Lakewood, OH	$18,000		Ben Voth Ben Voth Investments Dir, Gulf Insurance Co Tulsa, OK ST CHM, FIN CRP	$24,048
				George Wallace Fitchburg, MA	$10,000

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	Leif Sverdrup Chm & CEO Sverdrup & Parcel Associates (consulting eng. & architects) St. Louis, MO	$19,334	$5,000	Lloyd B. Waring VP Kidder, Peabody & Co Boston, MA REG CHM, FIN CRP	$10,000
	Employees of Texas Eastern Transmission Corp (Production refining & transportation of gas & oil) Houston, TX	$30,000 c		Irving Warshauer Accountant Nathan Tannenbaum & Co New York, NY	$18,000
	Employees of Time Oil Los Angeles, CA	$16,000		Employees of Wells Fargo (Bank) Good Govt Comm San Francisco, CA	$20,000
	Mrs. Louise Timken Canton, OH	$12,000		George H. Weyerhaeuser Pres & CEO Weyerhaeuser Co (Forest products) Tacoma, WA	$25,000
	W.R. Timken Chm Bd Timken Co (Mnfr roller bearings) Canton, OH	$14,000			

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Wheelock Whitney $12,466
(Investments, self-employed)
Minneapolis, MN

Mrs. John Truyens $10,315
Los Angeles, CA

Oscar S. Wyatt, Jr $25,512
Chm Bd
Coastal States
Gas Producing Co
Corpus Christi, TX

Holmes Tuttle $25,000
Chm Bd
Tuttle Enterprises
(auto sales & leasing)
Los Angeles, CA

SOURCE: COMMON CAUSE CAMPAIGN FINANCE MONITORING PROJECT

[00174]

1/1/71 TO 3/10/72		1/1/71 TO 4/6/72	
James D. Willson Sen VP Northrop Corp (Aerospace) Los Angeles, CA	$20,000		
$25,000	David K. Wilson Pres Cherokee Equity Corp Nashville, TN REG CHM, FIN CRP	$25,000	
$25,000	Anne Potter Wilson Nashville, TN	$25,000	

SOURCE: COMMON CAUSE CAMPAIGN FINANCE MONITORING PROJECT

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CONTRIBUTIONS BETWEEN $5,000 and $9,999

1/1/71 TO 3/10/72		1/1/71/ TO 4/6/72	1/1/71/ TO 3/10/72		1/1/71/ TO 4/6/72
	Collie Anderson Clinton, SC	$ 5,000		George Bunker Chmn Martin Marietta (Aerospace) New York, NY	$ 7,500
	Herbert Barness Dir Union Fidelity Corp Philadelphia,PA	$ 6,000			

Leigh Battson $ 7,500
Retired Director
Music Corp of
America
Beverly Hills, CA

Robert Beattie $ 5,324
VP Dart Industries
(Chemicals, houseware,
drug stores)
Los Angeles, CA

Karl Bendetsen $ 7,500
Chm Champion
Intl Corp (Forest
Products)
New York, NY

Robert Bendheim $7,500 c
Chm Bd
M. Lowenstein & Sons
Inc. (textiles)
New York, NY

August Busch, Jr. $ 9,749
Chm & CEO
Anheuser - Busch Inc
St. Louis, MO

Laurence Buser $ 5,000c
Pres Amer Export
Lines Inc
New York, NY

Morton Carpenter $ 6,000
Wilmington, DE

W. Sam Carpenter III $ 6,000
Dir E.I.duPont
Wilmington, DE
ST CHM, FIN CRP

Edward Carter $ 9,913
Chm Broadway -
Hale Stores Inc
Los Angeles, CA

B. F. Biaggini $ 5,000
Pres & CEO
Southern Pacific Co
San Francisco, CA

William Bristol III $ 5,000
Sr VP Bristol -
Myers Co
(Pharmaceuticals -
cosmetics)
New York, NY

George R. Brown $9,443
Dir, Halliburton Inc
(oil field svcs)
Chm Bd, Brown & Root
(Engineers & Construction)
Houston, TX

Hugh Chatham $ 5,000
Pres
Chatham Mfng Co
(Textiles)
Elkin, NC

Mrs. Claire Chennault 5,000
VP Flying Tiger Lines
Wash.,D.C.
CO-CHM FIN CRP

E. Cohen $ 5,000
VP & Tr
Giant Food Inc
(Wholesale & retail
grocers)
Landover, MD

SOURCE: Common Cause Campaign Finance Monitoring Project

1/1/71 TO 3/10/72		1/1/71 TO 4/6/72	1/1/71 to 3/10/72		1/1/71/ TO 4/6/72
	N.H. Cohen Chm Giant Food Inc Landover, MD	$ 5,000		Roy Disney VP Walt Disney Productions North Hollywood, CA	$ 5,876
	George Cook Chm & CEO Bankers Life Insurance Co of Nebraska Lincoln,NB RNFC ST CHM NB	$ 7,192		Timothy Doheny Self-employed Beverly Hills,CA	$ 5,000
	Lammot Copeland Retired Chm E.I. duPont Co Wilmington,DE	$ 5,000		William Doheny Oil industry exec Beverly Hills, CA	$ 5,000
				Elliott Donnelley V Chm RR Donnelley & Sons Co (Commercial printers) Chicago, IL	$ 5,000

	Alec P. Courtelis Courtelis Construction Co (Real estate development) Miami, FL	$ 5,000		Donald Douglas Sr VP McDonnell-Douglas Corp (Aerospace) St. Louis, MO	$ 7,827
	Joseph Cullman III Chm & CEO Philip Morris Inc (Cigarettes,textiles, toiletries,etc.) New York,NY	5,000		Roger Drackett Chm Drackett Co (Subs Bristol-Myers) (Household cleaners) Cincinnati, OH	$ 5,000
	Kenneth Dahlberg Chm,Dahlberg Electric Inc Minneapolis, MN REG CHM, FIN CRP	$ 7,000		J. Howard Edgerton Chmn, California Savings & Loan Los Angeles, CA Member, Republican Nat'l Committee	$ 5,000
	Corwin Denny Los Angeles, CA	$ 5,000			

William Denton VP Southern Pacific Co (Railroad) San Francisco, CA	$ 5,000		
Russell DeYoung Chm Goodyear Tire & Rubber Co Akron, OH	$ 5,000	George Edmonds Dir E. I. duPont (Chemicals) Wilmington, DE	$ 5,000
		Julius Epstein New York, NY	$ 9,000

SOURCE: Common Cause Campaign Finance Monitoring Project

1/1/71 TO 3/10/72	1/1/71 TO 4/6/72	1/1/71 TO 3/10/72	1/1/71 TO 4/6/72
Walter Erman V Chm Luria Steel & Trading Corp (Dealer scrap iron & steel) Chicago, IL	$ 5,000	Irwin Gleich Accountant Nathan Tannenbaum & Co New York, NY	$ 9,000
Stanley Frank Chm & Tr Carolina By- Products Co Inc (Animal fats & fat derived chemicals Greensboro, NC	$ 5,000	Edward Goldberger M. Lowenstein & Sons Inc. (textiles) New York, NY	$ 7,500c
Herbert J. Frensley Pres & Dir of	$ 6,760 (2000 c)	Richard Goldman Pres Richard N. Gold- man Co San Francisco, Ca	$ 5,230
		Fitzhugh Green Assoc Admin Intl Activities	$ 8,281

various subsid of
Haliburton Co
(oilfield svc) and
Brown & Root Constr.Inc.
Houston, TX

J. Burton Frierson $ 9,000 c
Chm Dixie Yarns Inc.
(textiles)
Chattanooga, TN

Alan Furth $ 5,000
VP
Southern Pacific Co
San Francisco, CA

Bruce Gelb $ 5,000
Sr VP
Bristol-Myers Co
New York, NY

$ 5,000 Lawrence Gelb $ 5,000
Chm Clairol Inc
(subs Bristol-Meyers)
(cosmetics & pharmaceuticals)
New York, NY

Environmental Protection
Agency
Washington, DC

Crawford $ 5,000
Greenwalt
Dir
E.I. duPont
Wilmington,DE

$ 5,000 Alan Gressel $ 5,000
Cleveland, OH

Peter Haas $ 5,000
Pres
Levi Strauss & Co
(Apparel)
San Francisco, CA

Walter Haas Jr $ 5,000
Chm & CEO Levi Strauss
& Co (Apparel)
San Francisco, CA

Richard Harman $ 5,000
New York, NY

John Gillin $ 5,000
Dallas, TX

Herbert Hazeltine $ 5,283
Attorney
Adams, Duque &
Hazeltine
Los Angeles, CA

SOURCE: Common Cause Campaign Finance Monitoring Project

[00178]

1/1/71 TO 3/10/72		1/1/71 TO 4/6/72	1/1/71 TO 3/10/72		1/1/71 TO 4/6/72
	George Heery Heery & Heery (Architects) Atlanta, GA	$ 5,000		Jay Kislak Miami, FL	$ 5,000
	F. Warren Hellman Dir Lehman Bros (Investments) New York, NY Member, Republican National Comm	$ 5,152		Sidney Lamon Leon Templesman & Co (Imptrs industrial diamonds) New York, NY	$ 5,000c
				William H. Lane Pres. Riviana Foods Inc (rice products) Houston, TX	$ 9,000 (8,000c)

Harold Helm Chm Exec Comm Chemical Bank & Trust Co New York, NY CO-CHM, FIN CRP	$ 6,300		Jacob Lehrman VP & Sec Giant Foods Inc Landover, MD	$ 5,000
John Hilson Gen Ptnr Wertheim & Co (Investment Bnkg) New York, NY	$ 5,000	$ 5,000	Herbert Louis Dir Combined Communications Corp (outdoor advtsg, radio, TV & films) Chicago, IL	$ 5,000
John Hobart Chm & Tr LaSalle St Press Co (Commercial printers) Chicago, IL	$ 6,451	$ 5,000	Michael Louis Chicago, IL	$ 5,000
			William Lund Los Angeles, CA	$ 5,096
David Ingalls V Chm Taft Broadcasting Cleveland, OH	$ 6,000	$ 8,000	William Lyles, Jr. VP Lyles, Bissett, Carlisle & Wolff (architects & planners) Columbia, SC	$ 8,000

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Paul Judy Pres & CEO A.G. Becker & Co (Underwriters & securities dealers) Chicago, IL	$ 7,500	$ 5,000	Andrew Machata Pres Blackhawk Heating & Plumbing Co Delray Beach, FL	$ 5,000
		$ 6,000	Connie S. Manniatty Gen Ptnr Salomon Bros. (investment banking) New York, NY	$ 6,000
W.S. Kilroy Oil operator Houston, TX	$ 6,000			

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SOURCE: Common Cause Campaign Finance Monitoring Project

[00179]

1/1/71 TO 3/10/72	1/1/71 TO 4/6/72	1/1/71 TO 3/10/72		1/1/71 TO 4/6/72
Albert Martin Los Angeles, CA	$ 5,008		Louis Nippert Attorney Cincinnati, OH	$ 8,000

Mrs. Tom May $ 5,000
Wife of VP
May Dept Stores
Los Angeles, CA

Gavin McBain $ 6,000
Chm Bd
Bristol-Myers
(Pharmaceuticals)
New York, NY

Glen McDaniel $ 5,100
Litton Industries
Los Angeles, CA

Robert McLain $ 7,500
Los Angeles, CA

Denman McNear $ 5,000
VP
Southern Pacific Co
(Railroad)
San Francisco, CA

$6,000 James O'Brien $ 6,000
Gen Ptnr
Salomon Bros
(Investment banking)
New York, NY

John O'Hara $ 5,000
Ptnr
Price Waterhouse & Co
(Accountants)
Philadelphia, PA

William Pereira $ 5,500
Pres William L. Pereira
Associates
(Architecture-engineering)
Los Angeles, CA

Franklin Pollack $ 5,611
V Chm
Dart Industries Inc
(Drug chain, pharmaceuticals)
pharmaceuticals)
Los Angeles, CA

Clarence Michalis $ 5,000
VP Bristol-Myers
(Pharmaceuticals)
New York, NY

Nathan Milikowsky $ 5,000
Owner Jordan
International Corp
(Importers-Exporters)
New Haven CT

Ronald Miller $ 6,188
VP Walt Disney
Productions
Burbank, CA

$9,000 Vincent Murphy $ 9,000
Gen Ptnr
Salomon Bros
(Investment banking)
New York, NY

Frank Newman $ 6,000
Retired
Boca Raton, FL

Robert Price $ 6,000
Lafayette, IN

Thomas Reed $ 5,000
Pres Quaker Hill
Development Corp
San Rafael, CA

Donald Regan $ 5,000
Merrill Lynch
(Security underwriters)
New York, NY

Walter Reisinger $ 6,657
VP Anheuser-Busch Inc
(Beer)
St. Louis, MO

Stanley Resor $ 5,000
Attorney
Debevoise, Plimpton,
Lyons & Gates
Former Secy of the Army
New York, NY

SOURCE: Common Cause Campaign Finance Monitoring Project

1/1/71 TO 3/10/72		1/1/71 TO 4/6/72	1/1/71 TO 3/10/72		1/1/71 TO 4/6/72
$ 6,000	Richard Rosenthal Gen Ptnr Salomon Bros (Investment banking) New York, NY	$ 6,000		Mark Shepherd, Jr. Pres & CEO Texas Instruments (Electronics) Dallas, TX	$ 9,913
$ 9,000	William Salomon Gen Ptnr Salomon Bros (Investment Bnkg) New York, NY	$ 9,000	$ 5,000	Edward Sullivan Insurance Agent Self-employed Mt. Kisco, NY	$ 5,000
	Santa Fe Employees Civic Trust 80 Good Government Fund (Atchison, Topeka & Santa Fe Railroad) Chicago, IL	$ 6,000		Maurice Templesman Leon Templesman & Co (Importers-industrial diamonds) New York, NY	$ 5,000 c

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M.M. Schmidt Balboa Island, CA	$ 5,000	
Frederic Schwartz V Chm Bd Bristol-Myers (Pharmaceuticals) New York, NY	$ 5,000	
W.T. Sesnon Los Angeles, CA	$ 5,000	
Hugh Sharp Dir E.I. duPont (Chemicals) Wilmington, DE	$5,000	
Forest Shumway Pres Signal Companies Inc (Aerospace equipment, oil & gas production) Los Angeles, CA	$ 5,000	
Mrs. Agnes Shumway Los Angeles, CA	$ 5,000	
Sam Thomas Ruston, LA		$ 5,000
William R. Timken, Jr VP Timken Co (Mnfr roller bearings) Canton, OH		$ 8,000
W.J. Timken Dir Timken Co (Mnfr roller bearings) Canton, OH		$ 5,000
Robert Tishman Pres Tishman Realty & Construction (Builders, real estate operators) New York, NY		$ 5,000
$ 8,000	Robert Turner Retired Palm Beach, FL	$ 8,000
	Leigh Tuvin Yonkers, NY	$ 9,000

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$ 6,000	Charles J. Simon Gen Ptnr Salomon Bros (Investmen' banking) New York, NY	$ 6,000		Union Carbide Pol.Cont. (Chemicals) Washington, D.C.	6,400
	John Simpson Chicago, Il	$ 6,000		Adalbert Von Gontard Dir Anheuser-Busch Inc (Beer) St. Louis, MO	$ 6,657

SOURCE: Common Cause Campaign Finance Monitoring Project

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[00181]

1/1/71 TO 3/10/72		1/1/71 TO 4/6/72	1/1/71 TO 3/10/72		1/1/71 TO 4/6/72
	William Walkup Chm Bd & Ex VP Signal Companies Inc (Aerospace systems, oil & gas products) Los Angeles, CA	$ 5,000		R. D. Ziegler VP Dart Industries Inc (Drug chain, pharmaceuticals) Los Angeles, CA	$5,786

	Hal Wallis Hollywood producer Universal City, CA	$ 7,500			
	Porter Washington Beverly Hills, CA	$ 5,000			
	Harry Wetzel Chm & Pres Garrett Corp (Aerospace Sub. of Signal Cos) Los Angeles, CA	$ 5,000			
	F. K. Weyerhaeuser former Chm Bd Weyerhaeuser Co (Forest products) St Paul, MN	$ 5,000			
	David Williams, Jr Chm Exec Comm Williams Companies (Pipeline operation, contractor) Tulsa, OK	$ 9,944			

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Ralph Wilson Dir Dart Industries Inc (Drug chain, pharmaceuticals) Los Angeles, CA	$ 5,456
Robert Winthrop Hon Chm Wood, Struthers & Winthrop Inc (Brokers) New York, NY	$ 8,000

SOURCE: Common Cause Campaign Finance Monitoring Project

B. COLE FINDINGS

1. Roland Cole began active work on his dissertation in early 1972, having taken a reading course in the fall of 1971 in preparation therefor. He studied the broad areas of campaigns including considerable material on election laws, theories of voting, and other related topics.

In researching and writing his dissertation, Cole particularly wanted to complement the complete and documented studies on contributions that he understood Common Cause would produce.

Cole relied on three basic sources of data in researching and writing his dissertation: literature in the field that would provide an indication of what candidates might spend money on, why they would so spend it, and how they had spent it in past campaigns; the official reports of campaign spending in all 67 major party campaigns for the United States Senate in 1972 and the coding thereof for computer analyses; and interviews with personnel in twelve of the 1972 campaigns and with observers and other individuals associated with the field

of campaign finance.

In the process of writing his dissertation, Cole wrote letter to over 200 political consultants, received about 100 replies, and continued correspondence with many of those who replied about what they did in political campaigns. Also, in preparation for his dissertation, Cole read over 450 separate sources.

Although Cole employed the assistance of other persons in preparation for the dissertation, for such things as coding, Cole at one time or another looked at every single line of code in the process itself and every single expenditure report summary page.

Cole interviewed the campaign manager or someone of comparable stature, the campaign treasurers in most, and one candidate in the 12 campaigns. The 12 campaigns in which he conducted these interviews were: the Illinois Pucinski and Percy campaigns; the Iowa Clark and Miller campaigns; the Michigan Kelly and Griffin campaigns; the Rhode Island Pell and Chafee campaigns, and the Texas Sanders and Tower campaigns. Tr. 9. Cole also interveiwed personnel involved in the Biden (D-Del.) Senatorial campaign, and the campaign manager of the Brooke (R-Mass.) campaign.

[000184]

In selecting the twelve particular campaigns for interviews with key personnel, Cole sought a wide range of campaigns: (1) campaigns which exceeded the expenditure limits and those which did not; (2) campaigns which won and those which lost; (3) campaigns which resulted in close elections and campaigns which resulted in victories by substantial margins; (4) campaigns in different regions of the country; (5) campaigns which appeared to have different kinds of strategies; (6) campaigns whose candidates had differing personalities; (7) campaigns in states with different geographical and social patterns; and (8) campaigns in states of different sizes.

Other factors entering the selection of campaigns for interviews with key personnel were (1) different ranges of

the amounts of money available to the candidates; (2) state population size; (3) the media structure of the states (the material for which was obtained from standard reference works); (4) whether or not gubernatorial races were being run concurrently with the senatorial races studied; (5) the amount of information the states did or did not provide to campaigns; (6) the extent to which campaigns in states

[000185]

felt the need to conduct vigorous election day activities; (7) population distribution; (8) differences in candidates' capacities as refelected in the expenditure reports; (9) the nature of the internal information flows within campaign organizations; (10) the extent to which campaigns paid for outside media consultants; (11) relative reliance upon media spending; (12) the generation of free media coverage; (13) the allocations of campaign moneys among various campaign activities; (14) prior offices held by candidates; (15) the extent to which services were provided by campaign consultants and the prior affiliations in campaign activities of the consultants themselves; (16) incumbency; and (17) party affiliations.

Many of these variables interrelate. For example, incumbents and challengers have different kinds of staffs, different backgrounds, and different campaign structures. The political culture, population and geography of a state, and the diversity within it tend to be associated with different kinds of campaign structure.

The distribution of voter registration lists and electoral information by the State of Massachusetts,

[000186]

one of the most generous in the country in terms of State-provided services, did not appear to make a major difference in that State's Senate race. The distribution of such material appeared to have more impact on local races in the State.

2. The Cole Affidavit filed by plaintiffs presents statistical data from the 1972 Senate elections. The statistical data were extracted from the reports filed pursuant to the Federal Election Campaign Act of 1971. This Act took effect on April 7, 1972 and the reports covered from April 7, 1972 to February 1, 1973. The calculations and conclusions are based on the following assumptions and definitions:

(a) "General Election Spending" includes total expenditures, as defined below, reported to the Secretary of the Senate as made subsequent to the date of nomination (unless denominated as a primary expense), plus total expenditures reported to the Secretary of the Senate as made prior to the date of nomination (unless denominated as a primary expense) where the candidate was

[000187]

unopposed in the primary or where the candidate had no serious opposition in the primary election (*i.e.*, where the candidate's opponent(s) received less than 10% of the primary vote).

(b) Primary spending includes total expenditures, as defined below, reported to the Secretary of the Senate as made prior to the date of

the primary (or primary runoff, unless such spending is considered general election spending as defined in the preceding paragraph).

(c) The definitions of general election spending and primary spending in the preceding paragraphs are based on the further assumption that it is possible to segregate expenditure figures for such elections with reasonable accuracy, but not with certainty, from the reports filed pursuant to the Federal Election Campaign Act of 1971.

(d) Expenditures are defined as total campaign disbursements including funds which

[000188]

have been used to repay loans made to the candidate or his political committees. The use of the proceeds of those loans is considered a campaign expenditure and the repayment of that loan is considered a separate and additional campaign expenditure. (*See* Exhibit 1 to Cole Deposition at Vol. II, pp. 298-299 for a tabulation of loans and loan repayments by 1972 Senate candidates.)

(e) Expenditures are further defined to include transfers to organizations outside the campaign.

(f) Expenditures are further defined to exclude unpaid debts. Specifically, debts incurred for purposes of the campaign, but not yet paid, are not considered campaign expenditures.

(g) Transfers between committees exclusively

supporting a candidate or between such committees and the candidate are not treated as either contributions or expenditures.

[000189]

3. The following chart shows the results of Cole's statistical analysis of the reports filed by the 67 major Senate candidates that he reviewed:

[000190]

Table 6. General Election Spending by Campaign

State*	Candidate**	Percent of Vote	General Election Spending: ¢ per Adult	$ per Vote	Total Spent ($)
AL	John H. Sparkman (DI)	65.3	0.26	0.97	633,119
	Winton M. Blount (RC)	34.7	0.31	1.99	691,732
AK	W. Eugene Guess (DC)	22.7	0.25	2.17	47,277
	Ted Stevens (RI)	77.3	1.04	2.63	195,241
AR	John J. McClellan (DI)	60.9	0.17	0.56	219,019
	Wayne Babbitt (RC)	39.1	0.06	0.29	72,449
CO	Floyd K. Haskell (DC)	50.3	0.13	0.41	187,865
	Gordon Allott (RI)	49.7	0.21	0.71	316,432
DE	Joseph R. Biden, Jr. (DC)	50.7	0.62	1.92	222,299
	J. Caleb Boggs (RI)	49.3	0.47	1.49	167,745
GA	Sam Nunn (DN)	54.0	0.14	0.65	412,706
	Fletcher Thompson (RN)	46.0	0.22	1.24	673,759
ID	William E. (Bud) Davis (DN)	46.5	0.37	1.24	174,699
	James A. McClure (RN)	53.5	0.59	1.71	277,355
IL	Peter C. Futinski (LC)	37.5	0.05	0.20	336,870
	Charles H. Percy (RI)	62.5	0.18	0.47	1,339,044
LA	Richard C. Clark (DC)	55.5	0.13	0.37	243,285
	Jack Miller (RI)	44.5	0.16	0.56	296,288
KS	Arch O. Tetzlaff (DC)	24.4	0.02	0.13	26,751
	James B Pearson (RI)	75.6	0.06	0.15	92,770
KY	Walter Dee Huddleston (DN)	51.7	0.34	1.40	742,566
	Louie B. Nunn (RN)	48.3	0.29	1.28	634,978
LA	J. Bennett Johnston,Jr. (DN)	56.7	0.16	0.62	369,714
	Ben C. Toledano (RN)	19.6	0.05	0.56	115,208
	John J. McKeithen***(N)	23.7	0.18	1.67	417,130
ME	William D. Hathaway (DC)	53.2	0.27	0.78	175,602
	Margaret Chase Smith (RI)	46.8	0.01	0.03	6,689
MA	John J. Droney (DC)	35.3	0.02	0.07	61,669
	Edward W. Brooke (RI)	64.7	0.09	0.24	357,091
MI	Frank J. Kelley (DC)	47.0	0.10	0.35	551,229
	Robert P. Griffin (RI)	53.0	0.24	0.79	1,399,220
MN	Walter F. Mondale (DI)	56.9	0.14	0.36	356,164
	Philip Hansen (RC)	43.1	0.12	0.41	304,633

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State*	Candidate**	Percent of Vote	General Election Spending: $ per Adult	$ per Vote	Total Spent ($)
MS	James O. Eastland (DI)	60.0	0.19	0.71	267,469
	Gil Carmichael (RC)	40.0	0.11	0.60	149,951
MT	Lee Metcalf (DI)	52.0	0.28	0.98	126,905
	Henry S. Hibbard (RC)	48.0	0.56	1.67	252,099
NB	Terry Carpenter (DC)	46.8	0.03	0.13	34,515
	Carl T. Curtis (RI)	53.2	0.25	0.83	259,475
NH	Thomas J. McIntyre (DI)	56.9	0.17	0.48	87,9[illegible]
	Wesley Powell (RC)	43.1	0.13	0.65	91,136
NJ	Paul J. Krebs (DC)	35.6	0.01	0.04	39,955
	Clifford P. Case (RI)	64.4	0.03	0.07	130,677
NM	Jack Daniels (DN)	46.0	0.64	2.31	401,093
	Pete V. Domenici (RN)	54.0	0.73	2.26	460,761
NC	Nick Galifianakis (DN)	46.0	0.08	0.39	262,971
	Jesse Helms (RN)	54.0	0.19	0.81	641,434
OK	Ed Edmondson (DN)	48.1	0.18	0.68	325,65[illegible]
	Dewey Bartlett (RN)	51.9	0.36	1.24	643,151
OR	Wayne Morse (DC)	46.2	0.13	0.45	192,885
	Mark O. Hatfield (RI)	53.8	0.17	0.50	246,245
RI	Claiborne deB. Pell (DI)	54.0	0.80	2.39	530,072
	John H. Chafee (RC)	46.0	0.69	2.42	457,359
SC	Eugene N. Zeigler (DC)	36.7	0.07	0.47	112,438
	Strom Thurmond (RI)	63.3	0.37	1.48	616,295
SD	James A. Abourezk (DN)	57.0	0.84	2.08	363,511
	Robert W. Hirsch (RN)	43.0	0.60	1.96	258,452
TN	Ray Blanton (DC)	38.1	0.07	0.41	182,250
	Howard H. Baker, Jr. (RI)	61.9	0.31	1.15	827,113
TX	Harold Barefoot Sanders (DC)	45.3	0.06	0.29	439,150
	John Goodwin Tower (RI)	54.7	0.34	1.37	2,505,873
VA	William B. Spong (DI)	47.3	0.13	0.64	414,733
	William L. Scott (RC)	52.7	0.21	0.92	660,251
WV	Jennings Randolph (DI)	66.4	0.13	0.33	159,875
	Louise Leonard (RC)	33.6	0.04	0.19	47,773
WY	Mike Vinich (DC)	28.7	0.05	0.26	10,507
	Clifford P. Hansen (RI)	71.3	0.88	1.91	193,852

* This study uses the official U.S. Postal Service abbreviations for each state. Note 7 in Volume II of this study contains the complete code.

** D = Democrat; R = Republican; I = Incumbent; C = Challenger; N = Nonincumbent (i.e., candidates for seat unoccupied at time of election)

*** Independent

4. Challengers won three 1972 races where they outspent incumbents (Hathaway defeated Smith in Maine; Biden defeated Boggs in Delaware, and Scott defeated Spong in Virginia). Challengers lost three 1972 races where they outspent incumbents (Powell lost to McIntyre in New Hampshire; Blount lost to Sparkman in Alabama, and Hibbard lost to Metcalf in Montana). Challengers won two 1972 Senate races where they spent less than the incumbents (Clark defeated Miller in Iowa; and Haskell defeated Allott in Colorado); challengers lost 17 1972 Senate races where they spent less than the incumbents.

5. In two 1972 Senate races where challengers defeated incumbents, the challenger spent more than the greater of 18.4¢ per adult of $220,000 (12¢ per adult or $150,000 plus 20% of these figures for expenses relating to fundraising, plus the greater of 2¢ per adult or $20,000 allocable to national party spending, plus the greater of 2¢ per adult or $20,000 allocable to state party spending): Biden defeated Boggs in Delaware, and Scott defeated Spong in Virginia. In three 1972 Senate races where challengers defeated incumbents the challenger spent less than these amounts: Haskell defeated Allott in Colorado; Clark defeated Miller in Iowa, and Hathaway defeated Smith in Maine.

6. In three of the five races for Senate in 1972 where challengers spent more than 18.4¢ per adult or $220,000 the challengers lost: Blount was defeated by Sparkman

in Alabama; Hibbard was defeated by Metcalf in Montana, and Chafee was defeated by Pell in Rhode Island.

The results stated in paragraph 5 would be identical if the cut-off were 14.4¢ per adult or $180,000 (12¢ or $150,000 plus 20%) instead of 18.4¢ or $220,000 upon which the conclusions in paragraph 5 and 6 are based.

7. The five challengers or their campaign managers that Cole interviewed stated that they felt they needed a certain amount of money to run their campaigns. They also stated that the amount of money they wished to spend was unrelated to the amount available to their incumbent opponent. However, none of these people who Cole interviewed knew what the figure was that they thought they needed to raise. Cole believes that these individuals were not able to set a figure on the amount they thought was necessary for their campaigns because the amount of money that a challenger needs to run his campaign is affected by innumerable factors.

[000193]

8. In order to determine whether or not a candidate had gained widespread name recognition, Cole relied on discussions with political observers based on what the observers learned from polls and other information obtained before and after the elections.

9. Name recognition was closely examined in the twelve campaigns in which key personnel were interviewed plus the Biden campaign, the campaign of Brooke's opponent and the Tetzlaff campaign in Kansas.

10. The manager of the Pucinski Illinois campaign felt that the candidate was fairly well-known in his Chicago district and somewhat well-known in other districts in

Chicago, but not known at all "down state." The candidate's name recognition was greater after the campaign than before. Key personnel in the campaign believed they did not have enough money to make contact through radio and newspaper ads.

11. Key personnel in the Pucinski campaign stated that some small unions or smaller locals of large unions in Illinois did not contribute because they believed they were unable to handle the FECA's disclosure and accounting requirements. These personnel also stated that many of the traditionally Democratic unions in

[000194]

Illinois were committed to Percy from the outset of the campaign.

12. In the 1972 Michigan Senate race, candidate Kelley, in the view of his key campaign personnel and other observers, had high name recognition at the beginning of the campaign and a very high name recognition at its end. They felt they did not have enough money to counteract the importance of the busing issue with the issue of the economy. The Kelley campaign did not raise more than the greater of 14.4 cents per adult or $180,000.

13. In the Sanders-Tower 1972 Texas Senate race, Sanders' campaign personnel felt that at the outset of his campaign Sanders was fairly well-known in northern Texas but lacked that degree of recognition elsewhere in the State. At the end of his campaign, they felt that Sanders was on a "rising curve" and that they had increased his name recognition, but not as much as they desired.

14. In the 1972 Senate campaigns for which Cole conducted interviews, Cole discovered that a number of people

who had worked in the campaigns had, during their term of service with an incumbent Senator on the State

[000195]

payroll, developed expertise on the issues, with regard to the State, and with regard to media outlets in the State. A number of individuals who had developed expertise moved from the Senate payroll onto the campaign payroll. Some candidates used in their campaigns lists developed through the use of the frank, in order to mail non-franked campaign material and to set up the campaign. All the incumbents Cole spoke to or heard about used the contacts built up over their term of office when they campaigned.

15. Cole discussed the supervision of volunteers with campaign managers involved in the campaigns for which Cole conducted interviews. All of them believed that while volunteers could occasionally supervise others, and while they could work without the supervision of a paid staff, this resulted in a level of efficiency markedly lower than when a paid staff supervised volunteers.

16. Both the Percy and the Tower campaigns used computers to produce contributor reports. The Tower campaign also used computers for expenditure reports. The Tower campaign spent at least $30,000 to comply with the disclosure requirements.

[000196]

17. The Huddleston campaign began with a $50,000 loan from the State Party and a $200,000 bank loan.

18. In Senator Pell's campaign for the Senate in 1972, twenty-one cents was spent for each voter contacted by telephone.

19. Thirty-three of the major Senate campaigns in 1972 spent in excess of the greater of 14.4 cents per adult or $180,000. Of these campaigns, 15 were incumbents, 2 of whom lost; 13 were campaigns of those in races in which no incumbent competed, 6 of whom lost; 5 were challengers, 3 of whom lost.

20. If all spending in excess of the greater of 14.4 cents per adult or $180,000 were eliminated from the spending in the 1972 Senate races, spending would have been $16.8 million or 2/3rds of the actual total.

21. The 67 major party Senate campaigns in 1972 spent a total of $2.3 million for mailing.

22. In the 1972 Senate campaigns, television advertisements cost more than $6 per minute for each 1,000 voters they reached.

23. The 1972 campaigns for the Senate spent

[000197]

$1,000,000 for telephone calls plus an estimated $100,000 for telephone banks listed under non-broadcast media.

24. In 1972, the 67 major party Senate campaigns spent $24.5 million in the general election.

25. In 1972, the 10 challengers who defeated incumbents in general elections for the House of Representatives spent an average of $125,521. The defeated incumbents spent an average of $86,075.

26. In the 1972 U.S. Senate campaigns, challengers won three out of the four races where they outspent the incumbent by more than 10 percentage points, one of the four races where they spent within 10 percentage points of the incumbent, and only one of the 17 races where

the incumbent outspent them by more than 10 percentage points.

27. In 1972, no U.S. Senate candidate who spent more than 32¢ per adult received less than 43 percent of the votes cast.

28. Five challengers to incumbents won in 1972 campaigns for the U.S. Senate. Three of these outspent their incumbent opponents. The basic categories in which challenger winners spent more relatively than their

[000198]

incumbent opponents were staff, events and material.

29. Of the 3 challengers mentioned in the preceding paragraph, 2 spent more than 14.4 cents per adult or $180,000 and more than 18.4 cents per adult or $220,000.

30. Some 1972 Senate campaigns conducted activities designed to obtain the news coverage they might otherwise have purchased. The amount of time such activities consumed varied from state to state.

31. The Griffin campaign for the U.S. Senate in 1972 found its mail drives for small contributions were recovering much more than the cost of the solicitation letters, but little more than that cost plus the cost of the letters, telephone calls and other efforts necessary to gather the required information about those who gave money.

The Griffin campaign made much more extensive use of direct mail than others. In addition to using the standard computer list that had been built up over the years, as did other incumbents, Griffin tried a series of mailings into neighborhoods he had not previously solicited.

[000199]

Incumbents other than Griffin made extensive use of direct mail solicitations to raise small contributions and recovered much more than all the costs incurred in that effort, including any costs incurred for letters, telephone calls and other efforts to gather the information required by the disclosure statute then in effect.

32. In the 1972 campaigns for the Senate, campaigns which spent more than the greater of 14.4 cents per adult or $180,000 received 27.26 percent of their total contributions in gifts of less than $100. Campaigns which spent less than the greater of 14.4 cents per adult or $180,000 received 19.74 percent of their total contributions in gifts of less than $100.

33. In the 1972 campaigns for the Senate, campaigns which spent the greater of 14.4 cents per adult or $180,000 received many more small contributions than did campaigns that spent below those amounts.

34. In the 1972 U.S. Senate campaigns, money was employed by many candidates to poll the electorate and to research issues perceived as problems by the electorate.

35. In 1972, candidates for the U.S. Senate employed money to conduct voting registration drives and canvasses to get out voters.

[000200]

36. Those 1972 U.S. Senate campaigns that recruited and used volunteers spent money to recruit, supervise and supply them.

37. Campaigns also spend money for telephone calls and letters used to solicit contributions.

38. A professional poll of the electorate in the U.S. Senate campaigns in 1972 cost between $3,000 and $25,000.

39. In the 1972 U.S. Senate races, volunteers who joined the campaign were supervised by paid staff. The campaigns hired a total of about 2500 people.

40. In the 1972 senatorial election campaigns, one campaign phone call or letter cost approximately 20 cents.

41. Practically every person with whom Cole spoke about the costs of raising campaign money said that the cost per contribution of obtaining large contributions is less than small contributions both in terms of money actually expended and, more often, in terms of the total time and effort of the staff. This was the view of practically every person with whom Cole spoke

[000201]

about costs of raising money.

42. Using 1967 as a base year (index equals 100), the consumer price index equalled 124.3 in 1972 and 147.7 in 1974. Correcting 1974 limits to 1972 dollars makes 14.4 cents per adult or $180,000 equal to in excess of the greater of 12.2 cents per adult or $153,000.

43. The 5 challengers who defeated incumbents spent in excess of the greater of 12.2 cents per adult or $153,000. Five challengers who lost to incumbents spent in excess of the greater of 12.2 cents per adult or $153,000.

44. The relation of campaign expenditures for campaigns for nomination to campaign expenditures for the general election varies widely from one area of the country to another, from one candidate to another.

45. The concept of marginal utility, as usually used by economists, refers to the idea that an increment of some thing, often money, differs in value to the individual or group receiving it depending upon how much of that thing, often money, the individual or group already has. That is to say, if you have a very little bit of money, for almost all purposes, slightly more

[000202]

would be much more valuable to you than would the same amount be to a person having a lot of money.

46. The marginal utility of campaign money is not identical from state to state or from congressional district to congressional district.

47. The Consumer Price Index is based on the prices of a wide variety of items of which campaign items represent small subsets. Furthermore, campaign items tend to be those, historically, whose prices increase faster than the inflation rate, in particular, items such as wages and other payments for personal services, and advertising costs of various sorts.

48. Small contributions are generally raised through mailings by the use of lists obtained by purchase, loan, or donation, of people who the campaign thinks might be willing to contribute to the candidate or the campaign for some reason. A list of that sort may be broken down into types of contributors and different letters may be sent to the different types. Or, perhaps, one general letter will be sent to all the types. On the basis of the response to the initial mailing or series of mailings the list will be culled to eliminate therefrom those people as to whom resolicitation would

not be fruitful. Furthermore, if names of other potential contributors are requested from this solicitation, such names might be added to the list. In these ways the list is expanded and contracted in different directions for future resolicitations.

49. A very high percentage of campaigns that seek to raise small contributions rely significantly on direct mail expenditures.

50. Costs of fundraising, particularly direct mail or telephone solicitation of a large number of people for small contributions, tends to average around 40 percent of the money raised.

51. Incidental out-of-pocket expenses connected with volunteer work and independent expenditures of other kinds which aid a candidate were not included in Cole's figures for expenditures in Senate races in 1972. Tr. 395. Such expenditures occurred in 1972.

52. In Cole's research for his dissertation, he was told of independent expenditures in campaigns for incidental cots which were in some cases over $500.

53. In attempting to draw inferences from 1972 election figures as to the effect of the FECA Amendments, inflation should be taken into account.

54. The ease or difficulty with which campaign money can be raised is one of several factors affecting the decision of individuals to run for office.

55. The availability of money for a campaign is a

factor in the decision of whether or not a person seeks public office.

56. One mailing to a household cannot be assumed fully to inform the voting members of that household of all campaign issues. In many cases, the voting members of the household will have independent interests and relate to different issues. For example, a direct mailing to a husband may not address issues of most concern to his wife.

57. A reduction in political campaign activity will decrease the amount of information voters receive directly from candidates.

58. Candidates cannot rely on the media to get to the voters through news reports the information that the candidates would like to get to the voters.

59. A reduction in news generating campaign activity will tend to reduce the amount of news coverage

of a campaign.

60. Incumbents have a better opportunity than challengers to engage in activities which generate news coverage which does not cost money.

61. It is possible that significant amounts of expenditures in Senate races in 1972 were made prior to April 7, 1972.

62. Items which might be major costs in a campaign would include wages, television, mailings, newspaper advertising, consulting fees, computer processing, and salaries for technical services such as accountants and lawyers.

Campaigns differ in the percentage of resources allocated to various purposes. Most of these costs, however, involve personal services or effort, both of which have risen in cost faster than in the Consumer Price Index.

63. Direct mail specialists indicate that the rate of return on mailing lists of incumbent senators was in many cases greater than the rate of return on lists the specialists could devise for challengers.

64. Numerous factors affect the level of spending in any campaign, including resources available

[000206]

to candidates, population, media structure in election districts, campaigns for other offices occurring at the same time, state services, campaign structure, information flow, media contracts, campaign strategy, paid and free media, background of candidate, political popularity of candidate, use of campaign consultants, and incumbency.

65. The amounts each campaign expended for particular campaign activities such as mailings, phone use, televison, etc., varied widely.

66. In 1972, 14 of the Senatorial candidates who exceeded 14.4¢ per adult or $180,000 in the general election were incumbents; 13 were non-incumbents (*i.e.*, there was no incumbent in the race); and 5 were challengers to incumbents.

67. The fact that a candidate in 1972 spent more than his opponent and/or more than the limit which the 1974 laws would impose was only one of a number of factors which had an effect on the outcome of the election.

68. Many challengers do not raise private

[000207]

contributions to the extent incumbents do, and are thereby severely disadvantaged.

69. Challengers vary widely in the nature and extent of the resources with which they commence a potential campaign, such as political appeal or name - recognition.

70. Cole does not know how many full-time volunteers worked in any of the 1972 Senatorial elections.

71. Many campaigns felt that disclosure did not lower the amount they could raise.

72. More research is needed before the complete answer to the relationship between money and votes is known.

73. Much more research is needed before one can know the extent of the relationship between votes and expenditures, how much it varies from campaign to campaign, and whether there is any causal relationship between the two factors. These reservations apply to the following statement: "Not only does the higher spending campaign win most of the time, its share of the votes cast is closely correlated with the share of the

[000208]

dollars spent."

74. Many factors other than and including the level of spending may be important in determining the outcome of all elections.

75. In many races in which an incumbent is running against a challenger who does not present opposition

neither candidate spends very much money.

76. No one connected with the 14 campaigns Cole studied most closely told Cole that he knew of a potential contributor who did not contribute because he feared disclosure would lead to reprisals against him other than in connection with intra-family disputes.

77. One of the factors determining how much a candidate can raise is the voters' perception of whether he can wage a credible campaign.

78. Profitable mailing lists have been developed for candidates who are not incumbents for use in direct mail solicitation efforts.

79. If money is precluded from entering the elective process in the form of campaign contributions, individuals and organizations will find other ways to use

[000209]

it in that process.

80. In 1972, many campaigns were able to raise substantial sums by asking for small amounts of money by mail or telephone.

[000210]

C. ADDITIONAL AGREED STATEMENT OF FACTS

1. Attachment A to the Answers to Plaintiffs' Interrogatories filed by intervening defendants Common Cause and John Gardner in this court is hereby adopted and incorporated herein by reference as Exhibit A. Attachment A includes a table of Expenditures for All November 1974 Senate Races, and a table of Expenditures for all November, 1974 House Races.

2. Attachment B to the Answers to Plaintiffs' Interrogatories filed by the intervening defendants Common Cause and John Gardner in this court is hereby adopted and incorporated by reference as Exhibit B. Attachment B includes a table of Expenditures for All November, 1974 Senate Races, and a table of Expenditures for All November, 1974 House Races. "No." on that document refers to the number of contributions in excess of $1,000. "Overage" refers to the total amount of contributions in excess of $1,000.

3. The following is a copy of the summary page of the financial report filed by the 1974 Gary Hart Senate Campaign Committee, Inc., as required by the FECA:

[0002111]

SUMMARY PAGE

Name of Committee GARY HART SENATE CAMPAIGN COMMITTEE, INC.

REPORT COVERING PERIOD FROM Oct. 25, 1974 THRU Dec. 31, 1974

	Column A—This period	Column B—Calendar year to date
SECTION A—RECEIPTS:		
Part 1. Individual contributions:		
a. Itemized (use schedule A*)	$ 78,278.22	
b. Unitemized	$ 36,478.94	
Total individual contributions	$ 114,7[illegible].16	$ 308,736.19
Part 2. Sales and collections:		
Itemized (use schedule B and as necessary schedule A*)	$ 12,806.20	$ 22,[illegible]
Part 3. Loans received:		
a. Itemized (use schedule A*)	$ 1,500.00	
b. Unitemized	$ none	
Total loans received	$ 1,500.00	$ 16,[illegible]3.50
Part 4. Other receipts (refunds, rebates, interest, etc.):		
a. Itemized (use schedule A*)	$ 6,088.37	
b. Unitemized	$ none	
Total other receipts	$ 6,088.37	$ 6,112.[illegible]
Part 5. Transfers in:		
Itemize all (use schedule A*)	$ none	$ none
TOTAL RECEIPTS	$ 135,151.73	$ 355,331.03
SECTION B—EXPENDITURES:		
Part 6. Communications media expenditures:		
Itemize all (use schedule C*)	$ 21,579.29	$ 85,683.81
Part 7. Expenditures for personal services, salaries, and reimbursed expenses:		
a. Itemized (use schedule D*)	$ 28,454.36	
b. Unitemized	$ 850.18	
Total expenditures for personal services, salaries, and reimbursed expenses	$ 29,304.54	$ 68,368.81
Part 8. Loans made:		
a. Itemized (use schedule D*)	$ none	
b. Unitemized	$ none	
Total loans made	$ none	$ none
Part 9. Non-media and other expenditures: (loan repayment -Sch. C)	8,158.50	
a. Itemized (use schedule C*)	$ 72,303.06	
b. Unitemized	$ 1,955.31	
Total other expenditures	$ 82,416.[illegible]	$ 195,114.38
Part 10. Transfers out:		
Itemize all (use schedule D*)	$ none	$ none
TOTAL EXPENDITURES	$ 133,300.73	$ 349,167.00

0075 0233

SECTION C—CASH BALANCES:

Cash on hand at beginning of reporting period	$ 7,636.11
Add total receipts (section A above)	$ 134,151.23
Subtotal	$ 142,337.34
Subtract total expenditures (section B above)	$ 135,366.73
Cash on hand at close of reporting period	$ 6,537.11

SECTION D—DEBTS AND OBLIGATIONS:

Part 11. Debts and obligations owed to the committee (use schedule E*)	$ NONE
Part 12. Debts and obligations owed by the committee (use schedule E*)	$ 14,336.27

*Schedules are to be used only when information is required. (See each Schedule for instructions.) When Regulation is unnecessary for a given Part, the total of any amounts for that Part is to be entered as a "0" sum on the "Unitemized" line of the appropriate Part of the Summary Report. The word "None" should be entered on any line of the Summary Report when no amount is being reported.

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[000212]

SUMMARY PAGE

Name of Committee GARY HART SENATE CAMPAIGN COMMITTEE, INC.

REPORT COVERING PERIOD FROM Oct. 15, 1974 **THRU** Oct. 24, 1974

	Column A—This period	Column B—Calendar year to date
SECTION A—RECEIPTS:		
Part 1. Individual contributions:		
a. Itemized (use schedule A*)	$ 38,261.00	
b. Unitemized	$ 5,475.54	
Total individual contributions	$ 43,736.54	$ 103,979.03

Part 2.	**Sales and collections:**		
	Itemized (use schedule B and as necessary schedule A*)	$none	$
Part 3.	**Loans received:**		
	a. Itemized (use schedule A*)	$none	
	b. Unitemized	$	
	Total loans received	$	$
Part 4.	**Other receipts (refunds, rebates, interest, etc.):**		
	a. Itemized (use schedule A*)	$none	
	b. Unitemized	$	
	Total other receipts	$	$ .31
Part 5.	**Transfers in:**		
	Itemize all (use schedule A*)	$	$
	TOTAL RECEIPTS	$	$
SECTION B—EXPENDITURES:			
Part 6.	**Communications media expenditures:**		
	Itemize all (use schedule C*)	$15,043.52	$64,134.52
Part 7.	**Expenditures for personal services, salaries, and reimbursed expenses:**		
	a. Itemized (use schedule D*)	$	
	b. Unitemized	$	
	Total expenditures for personal services, salaries, and reimbursed expenses	$	$

Part 8.	**Loans made:**		
	a. Itemized (use schedule D*)	$none	
	b. Unitemized	$	
	Total loans made	$none	$none
Part 9.	**Non-media and other expenditures:** Loan repayment, Sch. C	4,300.00	
	a. Itemized (use schedule C*)	$20,320.12	
	b. Unitemized	$ 41.21	
	Total other expenditures	$	$
Part 10.	**Transfers out:**		
	Itemize all (use schedule D*)	$none	$none
	TOTAL EXPENDITURES	$	$
SECTION C—CASH BALANCES:			
	Cash on hand at beginning of reporting period	$11,614.38	
	Add total receipts (section A above)	$	
	Subtotal	$	
	Subtract total expenditures (section B above)	$	
	Cash on hand at close of reporting period	$	
SECTION D—DEBTS AND OBLIGATIONS:			
Part 11.	**Debts and obligations owed *to* the committee (use schedule E*)**	$none	
Part 12.	**Debts and obligations owed *by* the committee (use schedule E*)**	$	

*Schedules are to be used only when itemization is required. (See each Schedule for instructions.) When itemization is unnecessary for a given Part, the total of any amounts for that Part is to be entered as a lump sum on the "*Unitemized*" line of the appropriate Part of the Summary Report. The word "None" should be entered on any line of the Summary Report when no amount is being reported.

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[000213]

Name of Committee GARY HART SENATE CAMPAIGN COMMITTEE, INC.

SUMMARY REPORT COVERING PERIOD FROM [illegible] THRU [illegible]

		Column A—This period	Column B—Calendar year to date
SECTION A—RECEIPTS:			
Part 1.	Individual contributions:		
	a. Itemized (use schedule A*)	$ 79,274.61	
	b. Unitemized	$ [illegible]	
	Total individual contributions	$ [illegible]	$ [illegible]
Part 2.	Sales and collections:		
	Itemized (use schedule B*)	$ none	$ [illegible]
Part 3.	Loans received:		
	a. Itemized (use schedule A*)	$ 7,732.50	
	b. Unitemized	$ none	
	Total loans received	$ [illegible]	$ [illegible]
Part 4.	Other receipts (refunds, rebates, interest, etc.):		
	a. Itemized (use schedule A*)	$ none	
	b. Unitemized	$ none	
	Total other receipts	$ none	$ 24.21
Part 5.	Transfers in:		
	Itemize all (use schedule A*)	$ none	$ 1,628.00
	TOTAL RECEIPTS	$ 101,302.61	$ 176,442.71

SECTION B—EXPENDITURES:			
Part 6.	Communications media expenditures:		
	Itemize all (use schedule C*)	$ [illegible]	$ [illegible]
Part 7.	Expenditures for personal services, salaries, and reimbursed expenses:		
	a. Itemized (use schedule D*)	$ 12,364.54	
	b. Unitemized	$ 244.37	
	Total expenditures for personal services, salaries, and reimbursed expenses	$ [illegible]	$ [illegible]
Part 8.	Loans made:		
	a. Itemized (use schedule D*)	$ none	
	b. Unitemized	$ none	
	Total loans made	$ [illegible]	$ none
Part 9.	Other expenditures: Loan repayment (sch. C)	$3,050.00	
	a. Itemized (use schedule C*)	$ 39,222.03	
	b. Unitemized	$ [illegible]	
	Total other expenditures	$ [illegible]	$ [illegible]
Part 10.	Transfers out:		
	Itemize all (use schedule D*)	$ none	$ none
	TOTAL EXPENDITURES	$ [illegible]	$ [illegible]

SECTION C—CASH BALANCES:	
Cash on hand at beginning of reporting period	$ [illegible]
Add total receipts (section A above)	$ [illegible]
Subtotal	$ [illegible]
Subtract total expenditures (section B above)	$ 93,108.42
Cash on hand at close of reporting period	$ 11,614.38

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SECTION D--DEBTS AND OBLIGATIONS:

Part 11. Debts and obligations owed *to* the committee (use schedule E*) ..... $

Part 12. Debts and obligations owed *by* the committee (use schedule E*) ..... $

*Schedules are to be used only when itemization is required. (See each Schedule for instructions.) When itemization is required for [illegible] Part, the total of any amount for the Part is to be entered as a lump sum on the "Unitemized" line of the appropriate Part of the Summary Report. The word "None" should be entered on any line of the Summary Report when no amount is being reported.

[000214]

Name of Committee GARY HART SENATE CAMPAIGN COMMITTEE, INC.

SUMMARY REPORT COVERING PERIOD FROM August 12, 1[illegible] THRU [illegible]

	Column A—This period	Column B—Calendar year to date
SECTION A—RECEIPTS:		
Part 1. Individual contributions:		
a. Itemized (use schedule A*)	$ 1,915.00	
b. Unitemized	$ 2,191.33	
Total individual contributions	$ [illegible]	$ 56,67[illegible].33
Part 2. Sales and collections:		
Itemized (use schedule B*)	$ 476.40	$ 2,520.46
Part 3. Loans received:		
a. Itemized (use schedule A*)	$ 2,000.00	
b. Unitemized	$ none	
Total loans received	$ [illegible]	$ 7,000.00
Part 4. Other receipts (refunds, rebates, interest, etc.):		
a. Itemized (use schedule A*)	$ none	
b. Unitemized	$ none	
Total other receipts	$ none	$ 24.31
Part 6. Transfers in:		
Itemize all (use schedule A*)	$ none	$ 1,623.30
TOTAL RECEIPTS	$ 3,579.72	$ 75,140.16
SECTION B—EXPENDITURES:		
Part 6. Communications media expenditures:		
Itemize all (use schedule C*)	$ 5,725.99	$ 11,827.64
Part 7. Expenditures for personal services, salaries, and reimbursed expenses:		
a. Itemized (use schedule D*)	$ 390.00	
b. Unitemized	$ 133.09	
Total expenditures for personal services, salaries, and reimbursed expenses	$ 523.09	$ 18,537.64
Part 8. Loans made:		
a. Itemized (use schedule D*)	$ none	
b. Unitemized	$ none	
Total loans made	$ none	$ none
Part 9. Other expenditures:		
a. Itemized (use schedule C*)	$ 759.93	
b. Unitemized	$ 576.11	
Total other expenditures	$ [illegible]	$ [illegible]

Part 10. Transfers out:
Itemize all (use schedule D*) ..... $ [illegible] $ [illegible]

TOTAL EXPENDITURES $ 7,576.12 $ 75,0[illegible]3.07

SECTION C—CASH BALANCES:
Cash on hand at beginning of reporting period ..... $ 2,[illegible]16.57
Add total receipts (section A above) ..... $ [illegible]
Subtotal ..... $ [illegible]
Subtract total expenditures (section B above) ..... $ [illegible]
Cash on hand at close of reporting period ..... $ [illegible]

SECTION D—DEBTS AND OBLIGATIONS:
Part 11. Debts and obligations owed *to* the committee (use schedule E*) ..... $ [illegible]
Part 12. Debts and obligations owed *by* the committee (use schedule E*) ..... $ [illegible]

*Schedules are to be used only when itemization is required. (See each Schedule for instructions.) When itemization is unnecessary for a given Part, the total of any amounts for that Part is to be entered as a lump sum on the "*Unitemized*" line of the appropriate Part of the Summary Report. The word "None" should be entered on any line of the Summary Report when no amount is being reported.

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[000215]

SUMMARY PAGE

Name of Committee GARY HART SENATE CAMPAIGN COMMITTEE, INC.

REPORT COVERING PERIOD FROM July 9, 1974 THRU August 20, 1974 - AMENDED

	Column A—This period	Column B—Calendar year to date
SECTION A—RECEIPTS:		
Part 1. Individual contributions:		
a. Itemized (use schedule A*)	$ 10,073.50	
b. Unitemized	$ 7,[illegible]25.02	
Total individual contributions	$ 17,[illegible]98.52	$ 61,[illegible]75.67
Part 2. Sales and collections:		
Itemized (use schedule B and as necessary schedule A*)	$ 5,625.00	$ 9,[illegible]13.06
Part 3. Loans received:		
a. Itemized (use schedule A*)	$ 4,220.00	
b. Unitemized	$ none	
Total loans received	$ 4,220.00	$ 4,220.00
Part 4. Other receipts (refunds, rebates, interest, etc.):		
a. Itemized (use schedule A*)	$ 24.31	
b. Unitemized	$ none	
Total other receipts	$ 24.31	$ 24.31
Part 5. Transfers in:		
Itemize all (use schedule A*)	$ none	$ 1,629.00
TOTAL RECEIPTS	$ 27,068.73	$ 66,[illegible]61.44

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SECTION B—EXPENDITURES:

Part 6. Communications media expenditures:		
Itemize all (use schedule C*)	$ 5,249.[illegible]	$ [illegible]
Part 7. Expenditures for personal services, salaries, and reimbursed expenses:		
a. Itemized (use schedule D*)	$ 6,740.[illegible]	
b. Unitemized	$ 527.[illegible]	
Total expenditures for personal services, salaries, and reimbursed expenses	$ [illegible]	$ [illegible]
Part 8. Loans made:		
a. Itemized (use schedule D*)	$	
b. Unitemized	$	
Total loans made	$ none	$ [illegible]
Part 9. Non-media and other expenditures:		
a. Itemized (use schedule C*)	$ 17,[illegible]	
b. Unitemized	$ [illegible]	
Total other expenditures	$ [illegible]	$ [illegible]
Part 10. Transfers out:		
Itemize all (use schedule D*)	$ none	$ [illegible]
TOTAL EXPENDITURES	$ [illegible]	$ [illegible]

SECTION C—CASH BALANCES:

Cash on hand at beginning of reporting period	$ 5,[illegible]
Add total receipts (section A above)	$ [illegible]
Subtotal	$ [illegible]
Subtract total expenditures (section B above)	$ [illegible]
Cash on hand at close of reporting period	$ [illegible]

SECTION D—DEBTS AND OBLIGATIONS:

Part 11. Debts and obligations owed *to* the committee (use schedule E*)	$ none
Part 12. Debts and obligations owed *by* the committee (use schedule E*)	$ [illegible]

*Schedules are to be used only when itemization is required. (See each Schedule for instructions.) When itemization is unnecessary for a [illegible] Part, the total of any amounts for that Part is to be entered as a lump sum on the "Unitemized" line of the appropriate Part of the Summary Report. The word "None" should be entered on any line of the Summary Report when no amount is being reported.

[000216]

SUMMARY PAGE

Name of Committee GARY HART SENATE CAMPAIGN COMMITTEE, INC.

REPORT COVERING PERIOD FROM June 28, 1974 THRU July 8, 1974 AMENDED

	Column A—This period	Column B—Calendar year to date
SECTION A—RECEIPTS:		
Part 1. Individual contributions:		
a. Itemized (use schedule A*)	$ 1,855.00	
b. Unitemized	$ 1,183.00	
Total individual contributions	$ 3,038.00	$ [illegible]
Part 2. Sales and collections:		
Itemized (use schedule B and as necessary schedule A*)	$ 147.00	$ 3,487.16

Part 3.	Loans received:		
	a. Itemized (use schedule A*)	$	
	b. Unitemized	$	
	Total loans received	$ None	$ None
Part 4.	Other receipts (refunds, rebates, interest, etc.):		
	a. Itemized (use schedule A*)	$	
	b. Unitemized	$	
	Total other receipts	$ None	$ None
Part 5.	Transfers in:		
	Itemize all (use schedule A*)	$ None	$ 1,628.00
	TOTAL RECEIPTS	$ 3,185.00	$ 29,491.65
SECTION B—EXPENDITURES:			
Part 6.	Communications media expenditures:		
	Itemize all (use schedule C*)	$ None	$ 911.75
Part 7.	Expenditures for personal services, salaries, and reimbursed expenses:		
	a. Itemized (use schedule D*)	$ 946.35	
	b. Unitemized	$ 91.30	
	Total expenditures for personal services, salaries, and reimbursed expenses	$ 1,037.65	$ [illegible]
Part 8.	Loans made:		
	a. Itemized (use schedule D*)	$	
	b. Unitemized	$ None	$ None
	Total loans made	$	

Part 9.	Non-media and other expenditures:	
	a. Itemized (use schedule C*)	$ 400.00
	b. Unitemized	$ 87.40
	Total other expenditures	$ 487.40
		$ 24,588.88
Part 10.	Transfers out:	
	Itemize all (use schedule D*)	$ None
		$ None
SECTION C—CASH BALANCES:	TOTAL EXPENDITURES	$ 1,525.05
		$ 37,250.23
	Cash on hand at beginning of reporting period	$ 3,954.55
	Add total receipts (section A above)	$ 3,185.00
	Subtotal	$ 7,139.55
	Subtract total expenditures (section B above)	$ 1,525.05
	Cash on hand at close of reporting period	$ 5,614.50
SECTION D—DEBTS AND OBLIGATIONS:		
Part 11.	Debts and obligations owed *to* the committee (use schedule E*)	$ None
Part 12.	Debts and obligations owed *by* the committee (use schedule E*)	$ 10,664.52

*Schedules are to be used only when itemization is required. (See each Schedule for instructions.) When itemization is unnecessary for a given Part, the total of any amounts for that Part is to be entered as a lump sum on the "Unitemized" line of the appropriate Part of the Summary Report. The word "None" should be entered on any line of the Summary Report when no amount is being reported.

[000217]

SUMMARY PAGE

Name of Committee GARY HART SENATE CAMPAIGN COMMITTEE, INC.

REPORT COVERING PERIOD FROM June 1, 1974 THRU June 20, 1974 - AMENDED

		Column A—This period	Column B—Calendar year to date
SECTION A—RECEIPTS:			
Part 1.	Individual contributions:		
	a. Itemized (use schedule A*)	$ 5,499.00	
	b. Unitemized	$ illegible	
	Total individual contributions	$ illegible	$ illegible
Part 2.	Sales and collections:		
	Itemized (use schedule B and as necessary schedule A*)	$ 1,384.09	$ illegible
Part 3.	Loans received:		
	a. Itemized (use schedule A*)	$	
	b. Unitemized	$	
	Total loans received	$ illegible	$ illegible
Part 4.	Other receipts (refunds, rebates, interest, etc.):		
	a. Itemized (use schedule A*)	$	
	b. Unitemized	$	
	Total other receipts	$ illegible	$ illegible
Part 5.	Transfers in:		
	Itemize all (use schedule A*)	$ none	$ 1,628.00
	TOTAL RECEIPTS	$ 7,504.80	$ 36,306.65
SECTION B—EXPENDITURES:			
Part 6.	Communications media expenditures:		
	Itemize all (use schedule C*)	$ 400.00	$ 911.75
Part 7.	Expenditures for personal services, salaries, and reimbursed expenses:		
	a. Itemized (use schedule D*)	$ 1,724.12	
	b. Unitemized	$ 46.28	
	Total expenditures for personal services, salaries, and reimbursed expenses	$ illegible	$ illegible
Part 8.	Loans made:		
	a. Itemized (use schedule D*)	$	
	b. Unitemized	$	
	Total loans made	$ none	$ none
Part 9.	Non-media and other expenditures:		
	a. Itemized (use schedule C*)	$ 2,834.03	
	b. Unitemized	$ illegible	
	Total other expenditures	$ illegible	$ illegible

Part 10. Transfers out:		
Itemize all (use schedule D*)	$ [illegible]	$ [illegible]
TOTAL EXPENDITURES	$ [illegible]	$ [illegible]
SECTION C—CASH BALANCES:		
Cash on hand at beginning of reporting period	$ [illegible]	
Add total receipts (section A above)	$ [illegible]	
Subtotal	$ [illegible]	
Subtract total expenditures (section B above)	$ [illegible]	
Cash on hand at close of reporting period	$ [illegible]	
SECTION D—DEBTS AND OBLIGATIONS:		
Part 11. Debts and obligations owed to the committee (use schedule E*)	$ [illegible]	
Part 12. Debts and obligations owed by the committee (use schedule E*)	$ [illegible]	

*Schedules are to be used only when itemization is required. (See each Schedule for instructions.) When itemization is unnecessary for a given Part, the total of any amounts for that Part is to be entered as a lump sum on the "Unitemized" line of the appropriate Part of the Summary Report. The word "None" should be entered on any line of the Summary Report when no amount is being reported.

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[000218]

SUMMARY PAGE

Name of Committee GARY HART SENATE CAMPAIGN COMMITTEE, INC.

REPORT COVERING PERIOD FROM Mar. 1, 1974 THRU May 31 1974 - AMENDED

	Column A—This period	Column B—Calendar year to date
SECTION A—RECEIPTS:		
Part 1. Individual contributions:		
a. Itemized (use schedule A*)	$ 11,136.81	
b. Unitemized	$ 2,720.41	
Total individual contributions	$ 13,857.22	$ 25,313.63
Part 2. Sales and collections: Itemized (use schedule B and as necessary schedule A*)	$ 1,801.16	$ 1,801.16
Part 3. Loans received:		
a. Itemized (use schedule A*)	$	
b. Unitemized	$	
Total loans received	$ NONE	$ NONE
Part 4. Other receipts (refunds, rebates, interest, etc.):		
a. Itemized (use schedule A*)	$	
b. Unitemized	$	
Total other receipts	$ NONE	$ NONE

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Part 5.	Transfers in: Itemize all (use schedule A*)	$ none	$ 1,621.00
	TOTAL RECEIPTS	$ 15,668.40	$ 22,201.25
SECTION B—EXPENDITURES:			
Part 6.	Communications media expenditures: Itemize all (use schedule C*)	$ 232.30	$ [illegible]
Part 7.	Expenditures for personal services, salaries, and reimbursed expenses:		
	a. Itemized (use schedule D*)	$ [illegible]	
	b. Unitemized	$ [illegible]	
	Total expenditures for personal services, salaries, and reimbursed expenses	$ [illegible]	$ [illegible]
Part 8.	Loans made:		
	a. Itemized (use schedule D*)	$	
	b. Unitemized	$	
	Total loans made	$	$
Part 9.	Non-media and other expenditures:		
	a. Itemized (use schedule C*)	$ [illegible]	
	b. Unitemized	$ [illegible]	
	Total other expenditures	$	$ [illegible]
Part 10.	Transfers out: Itemize all (use schedule D*)	$ [illegible]	$ [illegible]
	TOTAL EXPENDITURES	$ [illegible]	$ [illegible]

SECTION C—CASH BALANCES:

Cash on hand at beginning of reporting period	$ 5,673.45
Add total receipts (section A above)	$ [illegible]
Subtotal	$ [illegible]
Subtract total expenditures (section B above)	$ [illegible]
Cash on hand at close of reporting period	$ [illegible]

SECTION D—DEBTS AND OBLIGATIONS:

Part 11. Debts and obligations owed *to* the committee (use schedule E*)	$ [illegible]
Part 12. Debts and obligations owed *by* the committee (use schedule E*)	$ [illegible]

*Schedules are to be used only when itemization is required. (See each Schedule for instructions.) When itemization is unnecessary for a given Part, the total of any amounts for that Part is to be entered as a lump sum on the "Unitemized" line of the appropriate Part of the Summary Report. The word "None" should be entered on any line of the Summary Report where no amount is being reported.

[000219]

SUMMARY PAGE

Name of Committee GARY HART SENATE CAMPAIGN COMMITTEE, INC.

REPORT COVERING PERIOD FROM Jan. 1 1974 THRU Feb. 28, 1974 AMENDED

	Column A—This period	Column B—Calendar year to date
SECTION A—RECEIPTS:		
Part 1. Individual contributions:		
a. Itemized (use schedule A*)	$ 4275.00	
b. Unitemized	$ 7045.36	
Total individual contributions	$ [illegible]	$ 11,320.36

909 607

Part 2.	Sales and collections: Itemized (use schedule B and as necessary schedule A*)	$ 155.71	$ 155.71
Part 3.	Loans received:		
	a. Itemized (use schedule A*)	$	
	b. Unitemized	$	
	Total loans received	$ none	$ none
Part 4.	Other receipts (refunds, rebates, interest, etc.):		
	a. Itemized (use schedule A*)	$	
	b. Unitemized	$	
	Total other receipts	$ none	$ none
Part 5.	Transfers in:		
	Itemize all (use schedule A*)	$ 1628.00	$ 1,628.00
	TOTAL RECEIPTS	$ 13,133.36	$ 13,133.36

SECTION B—EXPENDITURES:

Part 6.	Communications media expenditures: Itemize all (use schedule C*)	$ 278.75	$ 278.75
Part 7.	Expenditures for personal services, salaries, and reimbursed expenses:		
	a. Itemized (use schedule D*)	$ 2,027.41	
	b. Unitemized	$ 123.51	
	Total expenditures for personal services, salaries, and reimbursed expenses	$ 2,150.92	$ 2,150.92

Part 8.	Loans made:		
	a. Itemized (use schedule D*)	$	
	b. Unitemized	$	
	Total loans made	$ none	$ none
Part 9.	Non-media and other expenditures:		
	a. Itemized (use schedule C*)	$ 7,980.41	
	b. Unitemized	$ 417.71	
	Total other expenditures	$ 8,398.12	$ 8,398.12
Part 10.	Transfers out:		
	Itemize all (use schedule D*)	$ none	$ none
	TOTAL EXPENDITURES	$ 10,827.79	$ 10,827.79

SECTION C—CASH BALANCES:

Cash on hand at beginning of reporting period	$ 2,373.03
Add total receipts (section A above)	$ 13,133.36
Subtotal	$ 15,506.39
Subtract total expenditures (section B above)	$ 10,827.79
Cash on hand at close of reporting period	$ 4,678.60

SECTION D—DEBTS AND OBLIGATIONS:

Part 11. Debts and obligations owed *to* the committee (use schedule E*)	$ none
Part 12. Debts and obligations owed *by* the committee (use schedule F*)	$ 2,212.72

*Schedules are to be used only when itemization is required. (See each Schedule for instructions.) When itemization is unnecessary for a given Part, the total of any amounts for that Part is to be entered as a lump sum on the "Unitemized" line of the appropriate Part of the Summary Report. The word "None" should be entered on any line of the Summary Report where no amount is being reported.

[000220]

SUMMARY PAGE

Name of Candidate Gary W. Hart

REPORT COVERING PERIOD FROM Oct. 25, 1974 THRU Dec. 31, 1974.

	Column A — This period	Column B — Calendar year to date
SECTION A—RECEIPTS:		
Part 1. Individual contributions:		
a. Itemized (use schedule A*)	$	
b. Unitemized	$	
Total individual contributions	$	$
Part 2. Sales and collections: Itemized (use schedule B and as necessary schedule A*)	$	$
Part 3. Loans received:		
a. Itemized (use schedule A*)	$	
b. Unitemized	$	
Total loans received	$	$
Part 4. Other receipts (refunds, rebates, interest, etc.):		
a. Itemized (use schedule A*)	$ 2,891.54	
b. Unitemized	$	
Total other receipts	$ 2,891.54	$ 5,671.34
Part 5. Transfers in: Itemize all (use schedule A*)	$	$
TOTAL RECEIPTS	$ 2,891.54	$ 5,671.34
SECTION B—EXPENDITURES:		
Part 6. Communications media expenditures: Itemize all (use schedule C*)	$	$
Part 7. Expenditures for personal services, salaries, and reimbursed expenses:		
a. Itemized (use schedule D*)	$ 2,764.81	
b. Unitemized	$	
Total expenditures for personal services, salaries, and reimbursed expenses	$ 2,764.81	$ 5,671.34
Part 8. Loans made:		
a. Itemized (use schedule D*)	$	
b. Unitemized	$	
Total loans made	$	$
Part 9. Non-media and other expenditures:		
a. Itemized (use schedule C*)	$	
b. Unitemized	$	
Total other expenditures	$	$
Part 10. Transfers out: Itemize all (use schedule D*)	$	$
TOTAL EXPENDITURES	$ 2,764.81	$ 5,671.34

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SECTION C—CASH BALANCES:

Cash on hand at beginning of reporting period	$ (126.7[illegible])
Add total receipts (section A above)	$ 2,891.5[illegible]
Subtotal	$ 2,764.8[illegible]
Subtract total expenditures (section B above)	$ 2,764.8[illegible]
Cash on hand at close of reporting period	$

*Schedules are to be used only when itemization is required. (See each Schedule for instructions.) [illegible] Part, the total of any amounts for that Part is to be entered as a lump sum on the "Unitemized" line of the [illegible] The word "None" should be entered on any line of the Summary Report when no amount is being reported.

[000221]

Name of Candidate GARY W. HART

SUMMARY REPORT COVERING PERIOD FROM Oct. 15, 1974 THRU October 24, 1974

	Column A—This period	Column B—Calendar year to date
SECTION A—RECEIPTS:		
Part 1. Individual contributions:		
a. Itemized (use schedule A*)	$	
b. Unitemized	$	
Total individual contributions	$	$
Part 2. Sales and collections:		
Itemized (use schedule B*)	$	$
Part 3. Loans received:		
a. Itemized (use schedule A*)	$	
b. Unitemized	$	
Total loans received	$	$
Part 4. Other receipts (refunds, rebates, interest, etc.):		
a. Itemized (use schedule A*)	$ 1,000.00	
b. Unitemized	$	
Total other receipts	$ 1,000.00	$ 2,77[illegible].80
Part 5. Transfers in:		
Itemize all (use schedule A*)	$	$
TOTAL RECEIPTS	$ 1,000.00	$ 2,779.80
SECTION B—EXPENDITURES:		
Part 6. Communications media expenditures:		
Itemize all (use schedule C*)	$	$
Part 7. Expenditures for personal services, salaries, and reimbursed expenses:		
a. Itemized (use schedule D*)	$	
b. Unitemized	$	
Total expenditures for personal services, salaries, and reimbursed expenses	$	$ 2,906.53
Part 8. Loans made:		
a. Itemized (use schedule D*)	$	
b. Unitemized	$	
Total loans made	$	$

Part 9. Other expenditures:

a. Itemized (use schedule C*)	$	
b. Unitemized	$	
Total other expenditures	$	$

Part 10. Transfers out:

Itemize all (use schedule D*)	$	$
TOTAL EXPENDITURES	$	$ 2,906.53

SECTION C—CASH BALANCES:

Cash on hand at beginning of reporting period	$ (1,126.73)
Add total receipts (section A above)	$ 1,000.00
Subtotal	$ (126.73)
Subtract total expenditures (section B above)	$
Cash on hand at close of reporting period	$ (126.73)

*Schedules are to be used only when itemization is required. See each Schedule for instructions. When itemization is necessary for a given Part, the total of any amounts for that Part is to be entered on the "Itemized" line of the appropriate part of the Summary Report. The word "None" should be entered on any line of the Summary Report when no amount is being reported.

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[0002221]

Name of Candidate Gary W. Hart

SUMMARY REPORT COVERING PERIOD FROM Aug. 30, 1974 THRU Oct. 14, 1974

SECTION A—RECEIPTS:

	Column A—This period	Column B—Calendar year to date
Part 1. Individual contributions:		
a. Itemized (use schedule A*)	$	
b. Unitemized	$	
Total individual contributions	$	$
Part 2. Sales and collections:		
Itemized (use schedule B*)	$	$
Part 3. Loans received:		
a. Itemized (use schedule A*)	$	
b. Unitemized	$	
Total loans received	$	$
Part 4. Other receipts (refunds, rebates, interest, etc.):		
a. Itemized (use schedule A*)	$ 1,679.80	
b. Unitemized	$	
Total other receipts	$ 1,679.80	$ 1,7 .80
Part 5. Transfers in:		
Itemize all (use schedule A*)	$	$
TOTAL RECEIPTS	$ 1,679.80	$ 1,779.80

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SECTION B—EXPENDITURES:

Part 6.	Communications media expenditures:		
	Itemize all (use schedule C*)	$	$
Part 7.	Expenditures for personal services, salaries, and reimbursed expenses:		
	a. Itemized (use schedule D*)	$ 2,806.53	
	b. Unitemized	$	
	Total expenditures for personal services, salaries, and reimbursed expenses	$ 2,806.53	$ 2,906.53
Part 8.	Loans made:		
	a. Itemized (use schedule D*)	$	
	b. Unitemized	$	
	Total loans made	$	$
Part 9.	Other expenditures:		
	a. Itemized (use schedule C*)	$	
	b. Unitemized	$	
	Total other expenditures	$	$
Part 10.	Transfers out:		
	Itemize all (use schedule D*)	$	$
	TOTAL EXPENDITURES	$ 2,806.53	$ 2,906.53

SECTION C—CASH BALANCES:

Cash on hand at beginning of reporting period	$ -0-
Add total receipts (section A above)	$ 1,679.80
Subtotal	$ 1,679.80
Subtract total expenditures (section B above)	$ 2,305.53
Cash on hand at close of reporting period	$ (1,128.73)

*Schedules are to be used only when itemization is required. (See each Schedule for instructions.) When itemization is unnecessary for a given Part, the total of any amounts for that Part are to be entered as a lump sum on the "Unitemized" line of the appropriate Part of the Summary Report. The word "None" should be entered on any line of the Summary Report where no amount is being reported.

[000223]

4. The follow list adjusts 1972 expenditures for the 1972 Senate Races (multiplied by 1.18) in light of the 18 percent rise in the Cost of Living Index between calendar year 1972 and calendar year 1974:

[000224]

EXPENDITURES FOR ALL 1972 SENATE RACES
(Multiplied By 1.18)

Candidates	Total Expenditures x 1.18
ALABAMA	
John Sparkman (D)	828,489
Winton Blount (R)	902,654
ALASKA	
Ted Stevens (R)	230,245
Gene Guess (D)	55,615
ARKANSAS	
John McClellan (D)	609,556
Wayne Babbitt (R)	85,719
COLORADO	
Floyd Haskell (D)	207,967
Gordon Allott (R)	363,800
DELAWARE	
Joseph Biden (D)	309,985
Caleb Boggs (R)	197,835
GEORGIA	
Sam Nunn (D)	670,202
Fletcher Thompson (R)	524,669
IDAHO	
James McClure (R)	478,830
William Davis (D)	241,756
ILLINOIS	
Charles Percy (R)	1,662,410
Roman Pucinski (D)	395,869
IOWA	
Dick Clark (D)	285,328
Jack Miller (R)	387,350
KANSAS	
James Pearson (R)	124,668
Arch Tetzlaff (D)	7,956
KENTUCKY	
Walter Huddleston (D)	777,136
Louie Nunn (R)	712,306

Candidates	Total Expenditures x 1.18
LOUISIANA	
Bennett Johnston (D)	603,707
John McKeithen (I)	465,522
Ben Toledano (R)	184,489
MAINE	
William Hathaway (D)	238,605
Margaret C. Smith (R)	17,641
MASSACHUSETTS	
Edward Brooke (R)	434,285
John Droney (D)	97,808
MICHIGAN	
Robert Griffin (R)	1,646,014
Frank Kelley (D)	646,426
MINNESOTA	
Walter Mondale (D)	635,468
Philip Hansen (R)	359,605
MISSISSIPPI	
James Eastland (D)	484,061
Gil Carmichael (R)	179,987
MONTANA	
Lee Metcalf (D)	161,130
Henry Hibbard (R)	338,363
NEBRASKA	
Carl Curtis (R)	295,463
Terry Carpenter (D)	45,582
NEW HAMPSHIRE	
Thomas McIntyre (D)	97,704
Wesley Powell (R)	123,639
NEW JERSEY	
Clifford Case (R)	171,425
Paul Krebs (D)	54,469
NEW MEXICO	
Pete Domenici (R)	610,426
Jack Daniels (D)	586,436
NORTH CAROLINA	
Jesse Helms (R)	772,010
Nick Galifianakis (D)	554,710

Candidates	Total Expenditures x 1.18
OKLAHOMA	
Dewey Bartlett (R)	737,612
Ed Edmondson (D)	604,228
OREGON	
Mark Hatfield (R)	353,359
Wayne Morse (D)	297,247
RHODE ISLAND	
Claiborne Pell (D)	623,449
John Chafee (R)	539,743
SOUTH CAROLINA	
Strom Thurmond (R)	786,268
Eugene Zeigler (D)	197,951
SOUTH DAKOTA	
James Abourezk (D)	503,934
Robert Hirsch (R)	354,944
TENNESSEE	
Howard Baker (R)	980,307
Leonard Blanton (D)	288,691
TEXAS	
John Tower (R)	2,716,207
Barefoot Sanders (D)	742,229
VIRGINIA	
William Scott (R)	731,491
William Spong (D)	449,487
WEST VIRGINIA	
Jennings Randolph (D)	157,731
Louise Leonard (R)	53,705
WYOMING	
Clifford Hansen (R)	200,456
Mike Vinich (D)	12,285

5. The following list adjusts 1972 expenditures for 1972 House Races (multiplied by 1.18) in light of the 18 percent rise in the Cost of Living Index between calendar year 1972 and calendar year 1974:

Expenditures for all 1972 House Races (Multiplied by 1.18)

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.	X 1.18
	ALABAMA					
1	Jack Edwards* (R)	No Opp.	76.5%	$ 42,862	$ 27,612	32,582
	D.W. McCrory (D)	69.3%	17.8	525	1,063	1,254
2	William Dickinson* (R)	No Opp.	54.8	61,432	50,193	59,228
	Ben C. Reeves (D) **	52.8	41.5	122,603	122,067	144,039
3	Bill Nichols* (D)	No Opp.	75.6	44,377	34,984	41,281
	Robert Kerr (R)	No Opp.	20.6	7,019	6,718	7,927
4	Tom Bevill* (D)	91.3	69.6	49,265	38,918	45,923
	Ed Nelson (R)	49.7	30.0	12,550	12,550	14,807
5	Robert E. Jones* (D)	78.1	74.2	33,596	30,786	36,327
	Dieter J. Schrader (R)	No Opp.	24.4	11,175	11,175	13,187
6	John Buchanan* (R)	No Opp.	59.8	35,898	33,976	40,092
	Ben L. Erdreich (D)	81.3	35.6	18,947	18,947	22,357
7	Walter Flowers* (D)	64.8	84.8	18,277	16,303	19,238
	ALASKA					
1	Nick Begich* (D)	No Opp.	56.2	77,565	64,893	76,574
	Don Young (R)	84.5	43.8	47,781	46,300	54,634

Cong. Dist		Primary Vote %	General Election Vote %	Contrib.	Expend.	x 1.18
	ARIZONA					
1	John J. Rhodes* (R)	88.1	57.3	73,267	48,315	57,011
	Gerald Pollock (D)	62.7	42.7	27,755	28,646	33,802
2	Morris K. Udall* (D)	No Opp.	63.5	38,174	38,174	45,045
	Gene Savoie (R)	No Opp.	36.5	32,791	31,694	37,419
3	Sam Steiger* (R)	No Opp.	63.0	55,446	37,691	44,475
	Ted Wyckoff (D)	No Opp.	37.0	24,629	24,648	29,085
4	*John Conlan (R)*	*61.5*	*53.0*	*150,341*	*154,662*	182,501
	Jack Brown (D)	*37.1*	*47.0*	*303,719*	*318,254*	375,540
	ARKANSAS					
1	Bill Alexander* (D)	No Opp.	No Opp.	1,040	-0-	
2	Wilbur Mills* (D)	No Opp.	No Opp.	-0-	-0-	
3	John P. Hammerschmidt* (R)	No Opp.	77.3	34,683	27,588	32,554
	Guy W. Hatfield (D) **	53.0	22.7	4,138	4,243	5,007
4	*Ray Thornton (D)*	*51.3*	*No Opp.*	*51,854*	*51,854*	61,188

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[000229]

Source: Common Cause
Campaign Monitoring Project

Cong. Dist		Primary Vote %	General Election Vote %	Contrib.	Expend.	x 1.18
	CALIFORNIA					
1	Don H. Clausen* (R)	No Opp.	62.3%	$ 70,526	$ 49,450	58,351
	William Nighswonger (D)	44.4%	34.2	6,632	6,601	7,789
2	Harold Johnson* (D)	No Opp.	68.4	60,906	37,981	44,818
	Francis X. Callahan (R)	53.1	28.7	28,966	28,985	34,202
3	John E. Moss* (D)	No Opp.	69.9	50,799	39,314	46,391
	John Rakus (R)	57.4	30.1	8,049	8,042	9,490
4	Robert Leggett* (D)	No Opp.	67.4	18,971	19,128	22,571
	Benjamin Chang (R)	53.8	32.6	24,957	24,957	29,449
5	Phillip Burton* (D)	66.7	81.8	53,606	46,899	55,341
	Edlo E. Powell (R)	No Opp.	18.2	19,076	18,715	22,084
6	William Mailliard* (R)	No Opp.	52.1	165,636	148,550	175,289
	Roger Boas (D)	77.7	47.9	265,272	266,760	314,777
7	Ronald Dellums* (D)	73.1	55.9	91,259	100,853	119,007
	Peter Hannaford (R)	39.3	38.1	104,530	100,286	118,338
	Frank Cortese (Am. Ind.)	No Opp.	6.0	48,980	48,980	58,776
8	*Fortney Stark (D)*	*55.7*	*52.9*	*217,246*	*266,664*	314,684
	Lew H. Warden (R)	*64.5*	*47.1*	*39,748*	*44,493*	52,502
9	Don Edwards* (D)	87.4	72.3	27,592	25,398	29,970
	Herb Smith (R)	No Opp.	25.1	5,386	4,792	5,655

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Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.	x 1.13
10	Charles Gubser* (R)	No Opp.	64.6	63,136	48,529	57,264
	Frank Gillette (D)	51.4	35.4	26,848	26,433	31,171
11	*Leo Ryan (D)*	*No Opp.*	*60.5*	*53,033*	*52,127*	*61,510*
	Charles Chase (R)	*53.6*	*36.9*	*52,622*	*52,441*	*61,900*
12	Burt Talcott* (R)	No Opp.	54.0	71,760	61,828	72,957
	Julian Camacho (D)	58.1	43.1	57,870	57,665	68,024
13	Charles Teague* (R)	No Opp.	73.8	47,791	39,546	46,664
	Lester Cleveland (D)	No Opp.	26.1	8,998	10,143	11,969
14	Jerome Waldie* (D)	No Opp.	77.6	48,272	47,160	55,649
	Floyd Sims (R)	No Opp.	22.4	4,604	4,524	5,338
15	John McFall* (D)	No Opp.	No Opp.	35,776	22,647	26,723
16	B.F. Sisk* (D)	No Opp.	79.1	90,472	54,890	64,770
	Carol Harner (R)	No Opp.	20.9	17,728	19,219	22,678
17	Paul McCloskey*(R)	43.7	54.6	313,856	321,550	377,438
	James Stewart (D)	36.8	35.9	103,905	109,418	129,113
	James Knapp (I)	No Opp.	9.5	76,068	75,970	89,645
18	Robert Mathias*(R)	No Opp.	66.4	66,570	47,737	56,330
	Vincent Lavery (D)	No Opp.	33.6	9,624	10,072	11,885
19	Chet Holifield*(D)	51.9	67.2	50,311	26,110	30,810
	Kenneth Fisher (R)	66.6	27.9	5,754	5,202	6,138
20	*Carlos Moorhead (R)*	*51.2*	*57.4*	*104,140*	*97,617*	*115,188*
	John Binkley (D)	*No Opp.*	*42.6*	*52,793*	*56,380*	*66,528*
21	Augustus Hawkins*(D)	No Opp.	82.9	14,112	10,459	12,342
	Rayfield Lundy (R)	No Opp.	17.1	325	325	384
22	James Corman*(D)	85.5	67.6	50,895	50,544	67,091
	Bruce Wolfe (R)	65.8	29.3	17,992	19,169	22,619

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.	x 1.13
	CALIFORNIA CONT'd					
23	Del Clawson*(R)	No Opp.	61.4%	$ 73,016	$ 65,007	76,758
	Conrad Tuohey (D)	54.1%	38.6	39,039	45,844	54,090
24	John Rousselot*(R)	No Opp.	70.1	67,970	61,473	72,538
	Luther Mandell (D)	66.0	29.9	4,660	4,660	5,498
25	Charles Wiggins*(R)	No Opp.	64.9	53,107	34,643	40,879
	Leslie Craven (D)	64.5	31.9	5,926	5,925	6,992
26	Thomas Rees*(D)	86.1	68.6	70,820	45,963	54,236
	Philip Rutta (R)	78.1	27.9	229	193	223
27	Barry Goldwater,Jr.*(R)	No Opp.	57.4	134,263	134,263	158,430
	Mark Novak (D)	37.0	42.6	44,292	42,840	50,551
28	Alphonzo Bell*(R)	No Opp.	60.7	50,604	48,719	57,488
	Mike Shapiro (D)	68.7	37.5	56,437	60,424	71,300
29	George Danielson*(D)	No Opp.	62.7	50,186	30,832	36,382
	Richard Ferraro (R)	No Opp.	33.5	14,533	14,526	17,141
30	Edward Roybal*(D)	85.7	68.4	26,224	24,574	28,997
	Bill Brophy (R)	83.0	28.6	27,681	31,143	36,749
31	Charles Wilson*(D)	50.7	52.3	67,942	67,713	79,921
	Ben Valentine (R)	No Opp.	42.5	63,432	62,875	74,193
32	Craig Hosmer*(R)	No Opp.	65.9	47,529	23,572	27,815
	Dennis Murray (D)	55.0	31.9	25,252	23,072	27,225

Cong. Dist.		Primary Vote %	General Election Vote %	Contrib.	Expend.	x 1.18
33	Jerry Pettis*(R)	No Opp.	75.0	80,029	36,833	43,643
	Ken Thompson (D)	48.7	25.0	5,151	5,311	6,267
34	Richard Hanna*(D)	No Opp.	67.1	74,530	40,785	48,126
	John Ratterree (R)	55.4	29.0	13,850	13,181	15,554
35	Glenn Anderson*(D)	No Opp.	74.8	61,574	38,077	44,931
	Vernon Brown (R)	No Opp.	25.2	214	3,079	3,633
36	*William Ketchum (R)*	*80.9*	*52.7*	*111,303*	*106,576*	*125,760*
	Timothy Lenucchi (D)	*28.5*	*43.5*	*57,013*	*58,066*	*68,518*
	William Armour (AI)	*No Opp.*	*3.8*	*15,938*	*16,913*	*19,957*
37	*Yvonne B. Burke (D)*	*53.6*	*73.2*	*131,756*	*138,024*	*162,868*
	Gregg Tria (R)	*59.7*	*24.6*	*24,112*	*24,112*	*28,452*
38	*George Brown, Jr. (D)*	*28.2*	*55.9*	*154,932*	*154,743*	*182,597*
	Howard Snider (R)	*45.4*	*43.4*	*109,509*	*108,537*	*128,074*
39	*Andrew Hinshaw (R)*	*45.6*	*65.7*	*162,293*	*161,614*	*190,704*
	John Black (D)	*47.0*	*34.3*	*10,549*	*10,515*	*12,407*
40	Bob Wilson*(R)	No Opp.	67.8	49,638	32,066	37,838
	Frank Caprio (D)	No Opp.	30.3	6,718	7,349	8,672
41	Lionel Van Deerlin*(D)	No Opp.	74.0	69,936	44,931	53,019
	Richard Kau (R)	No Opp.	26.0	16,231	15,776	18,616
42	*Clair Burgener (R)*	*78.7*	*67.5*	*107,395*	*91,664*	*108,164*
	Robert Love (D)	*52.6*	*29.1*	*4,952*	*4,917*	*5,802*
43	Victor Veysey*(R)	No Opp.	62.7	73,823	60,432	71,310
	Ernest Robles (D)	78.8	37.3	21,920	21,920	25,866

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[000231]

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.	x 1.18
	COLORADO					
1	Patricia Schroeder (D)	54.8%	51.6%	$ 86,007	$ 80,508	94,997
	James McKevitt*(R)	No Opp.	47.5	109,535	78,436	92,554
2	Donald Brotzman*(R)	No Opp.	66.3	81,784	60,004	70,805
	Francis Brush (D)	No Opp.	33.4	5,419	5,509	6,501
3	Frank Evans*(D)	No Opp.	66.3	58,426	45,734	53,966
	Charles Brady (R)	77.9	33.7	9,435	9,435	11,133
4	*James Johnson (R)*	*60.3*	*51.0*	*59,855*	*51,747*	*61,061*
	Alan Merson (D)	*52.7*	*49.0*	*88,504*	*104,334*	*123,114*
5	*William Armstrong (R)*	*No Opp.*	*62.3*	*97,142*	*88,536*	*104,473*
	Byron Johnson (D)	*66.7*	*36.5*	*17,291*	*17,273*	*20,382*
	CONNECTICUT					
1	William Cotter*(D)	No Opp.	56.9	96,208	96,208	113,525
	Richard Rittenband (R)	No Opp.	41.9	56,375	55,985	66,062
2	Robert Steele*(R)	No Opp.	65.9	141,485	141,485	166,952
	Roger Hilsman (D)	No Opp.	34.1	60,575	60,226	71,067
3	Robert Giaimo*(D)	No Opp.	53.3	79,997	79,608	93,937
	Henry Povinelli (R)	No Opp.	46.7	35,046	33,591	39,637
4	Stewart McKinney*(R)	No Opp.	63.1	96,679	112,669	132,949
	James McLoughlin (D)	No Opp.	36.9	41,009	39,809	46,974

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Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.	x 1.18
	FLORIDA CONT'D					
11	Paul Rogers*(D)	No Opp.	60.2%	$ 104,917	$ 87,253	102,958
	Joel Gustafson(R)	No Opp.	39.8	59,108	59,108	69,747
12	Herbert Burke*(R)	No Opp.	62.8	38,195	30,600	36,108
	James Stephanis (D)	No Opp.	37.2	56,434	56,434	66,592
13	*William Lehman (D)* **	*57.6*	*61.6*	*123,658*	*122,725*	*144,815*
	Paul Bethel (R)	*56.1*	*38.4*	*34,010*	*31,660*	*37,359*
14	Claude Pepper*(D)	64.3	67.6	95,863	95,964	113,120
	Evelio Estrella (R)	No Opp.	32.4	44,007	34,921	41,207
15	Dante Fascell*(D)	No Opp.	56.8	63,690	61,370	72,417
	Ellis Rubin (R)	51.6	43.2	9,511	9,522	11,236
	GEORGIA					
1	*Ronald Ginn (D)* **	*55.1*	*No Opp.*	*106,000*	*76,835*	*90,665*
2	Dawson Mathis*(D)	No Opp.	No Opp.	4,548	2,042	2,410
3	Jack Brinkley*(D)	No Opp.	No Opp.	2,125	1,030	1,215
4	Ben Blackburn*(R)	No Opp.	75.9	46,335	34,276	40,446
	Odell Welborn (D)	58.9	24.1	3,886	3,886	4,585
5	*Andrew Young (D)*	*60.7*	*52.8*	*170,051*	*159,421*	*188,117*
	Rodney Cook (R)	*No Opp.*	*47.2*	*160,321*	*149,615*	*176,547*

6	John Flynt*(D)	76.9	No Opp.	14,204	2,612	3,[illegible]
7	John Davis*(D)	52.1	58.3	32,249	18,500	21,[illegible]
	Charles Sherrill (R)	60.7	41.7	4,511	4,511	5,[illegible]
8	W.S. Stuckey*(D)	65.7	62.4	105,282	103,254	121,[illegible]
	Ronnie Thompson (R)	No Opp.	37.6	17,061	17,448	20,[illegible]
9	Phil Landrum*(D)	No Opp.	No Opp.	2,970	1,378	1,626
10	Robert Stephens*(D)	85.3	No Opp.	13,421	8,520	10,054
	HAWAII					
1	Spark Matsunaga*(D)	No Opp.	54.7	177,389	127,753	150,749
	Fred Rohlfing (R)	91.4	45.3	183,448	179,221	211,431
2	Patsy Mink* (D)	74.8	57.1	82,348	71,620	84,512
	Diana Hansen (R)	No Opp.	42.9	44,390	39,836	47,006
	IDAHO					
1	*Steven D. Symms (R)*	*45.7*	*55.6*	*92,099*	*89,306*	*105,381*
	Edward V. Williams (D)	*No Opp.*	*44.4*	*59,819*	*59,565*	*70,310*
2	Orval Hansen*(R)	No Opp.	69.2	26,516	11,457	13,519
	Willis H. Ludlow (D)	No Opp.	27.0	14,360	13,632	16,086
	ILLINOIS					
1	Ralph H. Metcalfe*(D)	No Opp.	91.4	21,036	9,861	11,636
	Louis Coggs (R)	No Opp.	8.6	-0-	1,235	1,457
2	Morgan F. Murphy*(D)	No Opp.	75.0	30,109	22,510	26,562
	James E. Doyle (R)	No Opp.	25.0	4,250	3,044	3,592
3	*Robert P. Hanrahan (R)*	*72.3*	*62.3*	*36,[illegible]*	*[illegible]*	*41,110*
	Daniel P. Coman (D)	*No Opp.*	*37.7*	*40,[illegible]*	*[illegible]*	*48,047*

[000233]

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.	x 1.1
	ILLINOIS CONT'D					
4	Edward J. Derwinski* (R)	No Opp.	70.5%	$ 22,862	$ 17,896	21,117
	C. F. Dore (D)	51.4%	29.5	12,155	11,342	13,384
5	John C. Kluczynski *(D)	86.5	72.8	20,566	12,936	15,264
	Leonard C. Jarzab (R)	No Opp.	27.2	-0-	1,694	1,999
6	Harold R. Collier *(R)	No Opp.	61.2	35,195	32,303	38,118
	Michael R. Galasso(D)	No Opp.	38.8	40,050	40,050	47,259
7	George W. Collins*(D)	83.8	82.8	5,535	1,585	1,870
	Thomas J. Lento (R)	No Opp.	17.2	792	792	935
8	Dan Rostenkowski*(D)	No Opp.	74.0	25,943	13,737	16,210
	Edward L. Stepnowski (R)	No Opp.	26.0	225	225	266
9	Sidney R. Yates*(D)	No Opp.	68.3	56,767	29,723	35,073
	Clark W. Fetridge (R)	No Opp.	31.7	16,679	16,353	19,297
10	Samuel H. Young (R)	59.7	51.6	195,219	206,166	243,276
	Abner J. Mikva*(D)	65.6	48.4	220,944	218,543	257,881
11	Frank Annunzio*(D)	No Opp.	53.3	122,484	117,415	138,550
	John J. Hoellen (R)	69.7	46.7	91,467	108,126	127,589
12	Philip M. Crane*(R)	No Opp.	74.2	61,574	52,661	62,140
	Edwin L. Frank (D)	No Opp.	25.8	4,225	4,154	4,902
13	Robert McClory*(R)	No Opp.	61.5	24,603	25,010	29,512
	Stanley W. Beetham (D)	No Opp.	38.5	18,607	20,120	23,742

Cong. Dist.		Primary Vote %	General Election Vote %	Contrib.	Expend.	x 1.18
14	John V. Erlenborn*(R)	No Opp.	72.8	28,004	24,871	29,348
	James M. Wall (D)	No Opp.	27.2	7,392	7,183	8,476
15	Leslie C. Arends*(R)	57.2	57.2	43,007	33,450	39,471
	Tim L. Hall (D)	52.8	42.8	5,119	7,753	9,149
16	John B. Anderson*(R)	No Opp.	71.9	48,050	33,544	39,582
	John E. Devine, Jr. (D)	69.0	28.1	1,522	1,463	1,726
17	*George M. O'Brien (R)*	*No Opp.*	*55.6*	*59,980*	*55,300*	*65,325*
	John J. Houlihan (D)	*No Opp.*	*44.4*	*32,748*	*32,756*	*38,643*
18	Robert H. Michel*(R)	No Opp.	64.8	22,976	20,850	24,603
	Steven L. Nordvall (D)	65.3	35.2	2,667	2,901	3,423
19	Tom Railsback*(R)	No Opp.	No Opp.	27,185	25,610	30,220
20	Paul Findley *(R)	No Opp.	68.8	84,683	71,187	84,001
	Robert S. O'Shea (D)	No Opp.	31.2	15,671	15,671	18,492
21	*Edward R. Madigan (R)*	*68.7*	*54.8*	*86,573*	*85,938*	*101,407*
	Lawrence E. Johnson (D)	*No Opp.*	*45.2*	*30,577*	*29,802*	*35,166*
22	George E. Shipley*(D)	No Opp.	56.5	55,343	52,812	62,318
	Robert L. Lamkin (R)	No Opp.	41.0	60,046	83,554	98,594
23	Melvin Price*(D)	No Opp.	75.1	24,435	17,134	20,218
	Robert Mays (R)	39.7	24.9	1,691	2,734	3,226
24	Kenneth J. Gray*(D)	No Opp.	93.7	27,941	11,624	13,716
	INDIANA					
1	Ray J. Madden*(D)	46.5	56.9	66,678	72,655	85,733
	Bruce Haller (R)	71.0	43.1	8,690	9,551	11,270

Source: Common Cause Campaign Monitoring Project

Cong. Dist.		Primary Vote %	General Election Vote %	Contrib.	Expend.	x 1.18
	INDIANA CONT'D					
2	Earl F. Landgrebe*(R)	54.5%	54.7%	$ 70,700	$ 55,474	65,459
	Floyd J. Fithian (D)	No Opp.	45.3	43,015	44,359	52,344
3	John Brademas*(D)	No Opp.	55.2	140,906	133,634	157,688
	Don M. Newman (R)	74.9	43.2	45,160	45,160	53,289
4	Edward Roush*(D)	No Opp.	51.5	63,875	63,613	75,063
	Allan Bloom (R)	48.0	48.5	123,796	165,984	195,861
5	Elwood Hillis*(R)	85.9	64.1	71,309	64,781	76,441
	Kathleen Williams (D)	37.5	35.9	6,644	9,026	10,651
6	William G. Bray*(R)	No Opp.	64.8	36,341	32,297	38,110
	David W. Evans (D)	No Opp.	35.2	8,296	8,253	9,739
7	John T. Myers* (R)	No Opp.	61.6	58,855	58,186	68,660
	Warren R. Henegar (D)	66.5	38.4	30,950	40,000	47,200
8	Roger H. Zion*(R)	No Opp.	63.4	48,192	24,731	29,183
	Richard L. Deen (D)	62.9	36.6	1,634	1,634	1,928
9	Lee H. Hamilton*(D)	No Opp.	62.9	63,625	61,021	72,005
	William A. Johnson (R)	37.9	37.1	6,555	6,389	7,539
10	David W. Dennis*(R)	No Opp.	57.2	52,731	51,906	61,249
	Phillip R. Sharp (D)	67.0	42.8	69,879	69,879	82,457
11	William H. Hudnut III (R)	45.5	51.2	163,442	165,016	194,719
	Andrew R. Jacobs * (D)	84.7	48.8	71,166	64,422	76,018

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.	x 1.19
	IOWA					
1	Edward Mezvinsky (D)	63.7	53.4	116,349	113,546	135,120
	Fred Schwengel*(R)	No Opp.	45.7	69,514	69,615	82,842
2	John C. Culver*(D)	No Opp.	59.2	59,910	40,794	48,537
	Theodore R. Ellsworth (R)	No Opp.	40.8	63,480	67,946	80,856
3	H. R. Gross*(R)	No Opp.	55.7	43,963	41,053	48,853
	Lyle Taylor (D)	62.4	44.3	26,795	26,795	31,886
4	Neal Smith*(D)	No Opp.	59.6	57,382	56,370	67,080
	John H. Kyl*(R)	No Opp.	40.4	108,153	112,154	133,463
5	William J. Scherle*(R)	No Opp.	55.3	47,296	35,105	41,775
	Thomas Harkin (D)	No Opp.	44.7	25,871	24,437	29,080
6	Wiley Mayne*(R)	No Opp.	52.5	54,232	50,166	59,698
	Berkley Bedell (D)	No Opp.	47.5	87,712	87,694	104,356
	KANSAS					
1	Keith G. Sebelius*(R)	No Opp.	77.2	53,186	20,545	24,448
	Morris Coover (D)	No Opp.	21.6	-0-	-0-	
2	William R. Roy*(D)	No Opp.	60.6	145,381	148,995	177,304
	Charles D. McAtee (R)	63.4	37.1	116,087	115,985	138,022
3	Larry N. Winn*(R)	No Opp.	71.0	46,191	37,310	44,399
	Charles Barsotti (D)	No Opp.	25.4	5,991	5,991	7,129
4	Garner E. Shriver*(R)	No Opp.	73.2	47,682	34,954	41,595
	John S. Stevens (D)	50.7	24.8	7,300	6,557	7,803
5	Joe Skubitz*(R)	No Opp.	72.3	28,251	21,765	25,900
	Lloyd Kitch (D)	No Opp.	27.7	3,785	3,676	4,374

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.	x 1.19
	KENTUCKY					
1	Frank A. Stubblefield*(D)	73.1%	64.8%	$ 30,055	$ 30,940	36,819
	Charles T. Banken, Jr. (R)	No Opp.	33.7	1,655	2,558	3,044
2	William H. Natcher*(D)	No Opp.	61.5	9,396	9,396	11,182
	J. G. Carter (R)	No Opp.	38.5	1,699	7,327	8,719
3	Romano L. Mazzoli*(D)	93.9	62.1	63,140	58,410	69,508
	Phil Kaelin, Jr. (R)	70.7	37.0	19,648	21,161	25,182
4	M. G. Snyder*(R)	No Opp.	73.8	77,274	29,411	35,000
	James W. Rogers (D)	46.0	26.2	445	375	446
5	Tim Lee Carter*(R)	No Opp.	73.5	15,806	12,155	14,464
	Lyle L. Willis (D)	50.1	26.5	21	216	257
6	John B. Breckinridge (D)	57.8	52.4	65,056	69,216	82,367
	Laban P. Jackson (R)	44.1	46.8	82,177	82,152	97,761
7	Carl D. Perkins*(D)	93.4	61.9	6,455	5,746	6,838
	Robert Holcomb (R)	72.9	38.1	48,035	48,035	57,162
	LOUISIANA					
1	Edward Hebert* (D)	No Opp.	No Opp.	500	520	619
2	Hale Boggs*(D)	83.7	No Opp.	116,434	90,380	107,552
3	David C. Treen (R)	No Opp.	54.0	139,578	155,629	185,199
	J. Louis Watkins (D) **	54.2	46.0	228,495	223,767	266,283

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Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend. x 1.18
4	Joe D. Waggonner, Jr.*(D)	No Opp.	No Opp.	8,304	1,596 1,882
5	Otto E. Passman* (D)	61.0	No Opp.	38,295	37,545 44,303
6	John R. Rarick*(D)	60.8	No Opp.	53,312	42,459 50,102
7	John B. Breaux* (D)	55.0	No Opp.	141,924	137,420 162,156
8	*Gillis W. Long (D)*	*52.9*	*68.5*	*107,919*	*107,319 127,344*
	Roy C. Strickland (R)	*No Opp.*	*14.7*	*5,705*	*5,612 6,622*
	S.R. Abramson (A)	*No Opp.*	*16.8*	*21,165*	*20,835 24,585*
	MAINE				
1	Peter Kyros *(D)	66.5%	59.4%	58,245	56,093 66,190
	Robert Porteous (R)	72.4	40.6	64,303	64,104 75,643
2	*William Cohen (R)*	*60.2*	*54.4*	*126,369*	*165,337 195,168*
	Elmer Violette (D)	*78.4*	*45.6*	*81,415*	*94,696 111,741*
	MARYLAND				
1	William Mills*(R)	80.2	70.5	94,806	93,945 110,855
	John Hargreaves (D)	53.1	29.5	40,580	40,419 47,694
2	Clarence Long*(D)	76.1	65.8	71,593	66,425 78,382
	John Bishop (R)	66.0	34.2	75,928	75,606 81,215
3	Paul Sarbanes*(D)	53.3	69.7	61,203	61,272 72,301
	Robert Morrow (R)	34.1	30.3	2,505	4,498 5,308
4	*Marjorie Holt (R)*	*71.1*	*59.4*	*111,488*	*113,513 133,945*
	Werner Fornos (D)	*22.5*	*40.6*	*133,918*	*145,973 172,248*
5	Lawrence Hogan*(R)	93.5	62.9	108,488	108,282 127,773
	Edward Conroy (D)	51.4	37.1	76,584	92,301 108,915

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[000236]

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend. x 1.18
	MARYLAND CONT'D				
6	Goodloe Byron*(D)	59.9%	64.8%	$ 77,220	$ 77,186 91,079
	Edward Mason(R)	54.5	35.2	59,065	60,333 71,193
7	Parren Mitchell*(D)	50.5	80.0	44,898	55,577 65,681
	Verdell Adair (R)	44.4	20.0	471	592 699
8	Gilbert Gude* (R)	No Opp.	63.9	74,924	70,899 83,661
	Joseph Anastasi (D)	78.3	36.1	61,904	61,904 73,047
	MASSACHUSETTS				
1	Silvio D. Conte* (R)	No Opp.	No Opp.	10,971	2,346 2,768
2	Edward P. Boland*(D)	No Opp.	No Opp.	-0-	-0-
3	Harold D. Donohue*(D)	No Opp.	No Opp.	11,415	125 148
4	Robert F. Drinan*(D)	No Opp.	48.8	191,801	199,703 235,650
	Martin A. Linsky (R)	33.5	45.8	139,576	148,285 174,976
	John Collins (In-Con)	No Opp.	5.4	23,526	22,579 26,643
5	*Paul W. Cronin (R)*	*58.5*	*53.5*	*145,532*	*171,414 202,269*
	John F. Kerry (D)	*27.5*	*44.7*	*267,615*	*273,745 330,100*
	Roger Durkin (I)	*No Opp.*	*1.8*	*45,572*	*62,982 74,258*
6	Michael Harrington*(D)	74.3	64.1	115,546	114,317 134,894
	James Brady Mosely (R)	No Opp.	35.9	90,957	93,400 110,212
7	Torbert H. Macdonald* (D)	82.3	67.7	28,810	19,918 23,503
	Joan Aliberti (R)	37.3	32.3	25,274	25,213 29,751

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Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.	x 1.15
8	Thomas P. O'Neil, Jr.*(D)	No Opp.	88.7	42,107	35,901	41,286
	John Powers (SW)	No Opp.	11.3	229	229	270
9	John Moakley (I)	No Opp.	43.2	144,867	157,566	180,701
	Louise Day Hicks*(D)	37.7	41.1	32,356	29,666	35,699
	Howard Miller (R)	51.4	14.2	58,240	58,240	66,976
10	Margaret M. Heckler*(R)	No Opp.	No Opp.	14,704	10,518	12,096
11	James A. Burke*(D)	No Opp.	No Opp.	15,957	15,971	18,367
12	Gerry E. Studds (D)	No Opp.	50.3	200,926	185,756	213,619
	William D. Weeks (R)	No Opp.	49.7	269,858	269,046	309,403
	MICHIGAN					
1	John Conyers*(D)	No Opp.	88.4	39,663	29,691	34,145
	Walter Girardot (R)	64.7	10.8	1,513	978	1,125
2	Marvin Esch*(R)	No Opp.	56.0	73,416	71,649	82,396
	Marvin Stempien (D)	32.1	43.3	53,141	55,292	63,586
3	Garry Brown*(R)	No Opp.	59.2	32,012	23,116	26,584
	James Brignall (D)	63.1	39.9	25,375	26,320	30,268
4	Edward Hutchinson*(R)	61.5	67.3	40,401	40,110	46,127
	Charles W. Jameson (D)	58.9	32.7	10,894	12,300	14,145
5	Gerald Ford*(R)	No Opp.	61.1	98,576	87,345	100,447
	Jean McKee (D)	43.1	37.7	10,223	8,796	10,115
6	Charles Chamberlain*(R)	59.2	50.6	53,757	52,136	59,956
	Robert Carr (D)	No Opp.	49.4	53,469	52,462	60,331

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.	x 1.15
	MICHIGAN CONT'D					
7	Donald Riegle, Jr.*(R)	No Opp.	70.1%	$ 29,734	$ 23,892	27,476
	Eugene Mattison (D)	50.2%	29.9	1,200	1,200	1,380
8	James Harvey*(R)	No Opp.	59.3	53,534	50,546	58,128
	Jerome Hart (D)	74.0	39.4	27,517	27,517	31,645
9	Guy Vander Jagt* (R)	No Opp.	69.4	50,983	23,887	27,470
	Larry Olson (D)	No Opp.	29.5	4,635	4,636	5,331
10	Elford Cederberg*(R)	81.7	66.7	19,410	17,684	20,336
	Bennie Graves (D)	No Opp.	30.9	5,197	4,666	5,366
11	Philip Ruppe*(R)	No Opp.	69.4	30,854	27,045	31,102
	James McNamara (D)	63.1	29.8	308	526	605
12	James O'Hara*(D)	No Opp.	50.8	66,463	62,472	71,843
	David Serotkin (R)	55.8	49.2	44,075	43,619	50,162
13	Charles Diggs*(D)	No Opp.	85.6	3,791	2,566	2,951
	Leonard T. Edwards(R)	No Opp.	13.3	10	10	12
14	Lucien Nedzi*(D)	43.0	54.9	36,189	32,765	37,680
	Robert McGrath (R)	71.3	45.1	16,568	16,568	19,053
15	William Ford*(D)	61.9	65.8	57,399	42,352	48,705
	Ernest Fackler (R)	No Opp.	32.2	40	43	50
16	John Dingell*(D)	85.8	68.1	33,611	26,593	30,582
	William Kostron (R)	No Opp.	29.7	239	239	275

Cong. Dist.			Primary Vote %	General Election Vote %	Contrib.	Expend.	Expend. x 1.1
17	Martha Griffiths *(D)		No Opp.	66.8	31,027	22,506	24,756
	Ralph Judd		55.0	32.5	645	527	580
18	*Robert Huber (R)*		*63.3*	*52.6*	*69,240*	*66,001*	*72,601*
	Daniel Cooper (D)		*37.0*	*47.4*	*84,588*	*83,280*	*91,608*
19	William Broomfield *(R)		57.6	70.4	66,986	41,706	45,876
	George Montgomery (D)		No Opp.	28.6	9,769	9,566	10,523
	MINNESOTA						
1	Albert Quie *(R)		No Opp.	70.7	37,552	32,586	35,845
	Charles Thompson (D)		60.6	29.3	379	438	482
2	Ancher Nelsen *(R)		No Opp.	57.1	72,206	68,855	75,741
	Charles Turnbull (D)		No Opp.	42.9	26,612	28,883	31,771
3	Bill Frenzel *(R)		93.1	62.9	119,544	97,933	107,726
	Jim Bell (D)		No Opp.	31.3	37,338	38,775	42,653
4	Joseph Karth *(D)		No Opp.	72.4	59,862	50,094	55,103
	Steve Thompson (R)		No Opp.	27.6	3,926	3,926	4,319
5	Donald Fraser* (D)		No Opp.	65.8	97,654	93,628	103,001
	Allan Davisson (R)		72.8	24.4	9,399	9,399	10,339
6	John Zwach *(R)		No Opp.	51.0	110,133	87,233	95,956
	Richard Nolan (D)		No Opp.	49.0	95,943	97,481	107,229
7	Bob Bergland *(D)		No Opp.	59.0	135,451	92,871	102,158
	Jon Haaven (R)		No Opp.	41.0	92,625	90,524	99,576
8	John Blatnik *(D)		76.1	75.9	54,566	54,612	60,073
	Edward Johnson (R)		No Opp.	24.1	745	395	466

Cong. Dist.	Source: Common Cause Campaign Monitoring Project		Primary Vote %	General Election Vote %	Contrib.	Expend.	Expend. x 1.1
	MISSISSIPPI						
1	Jamie L. Whitten(D)		86.7%	No Opp.	$ 4,100	$ 4,100	4,835
2	*David R. Bowen (D)*	**	*57.0*	*61.9%*	*149,100*	*142,500*	*168,150*
	Carl Butler (R)		*No Opp.*	*34.7*	*80,759*	*80,449*	*94,930*
3	G.V. Montgomery* (D)		No Opp.	No Opp.	1,550	381	450
4	*Thad Cochran (R)*		*No Opp.*	*47.8*	*102,880*	*100,634*	*118,748*
	Ellis B. Bodron (D)	**	*50.8*	*44.0*	*100,108*	*100,128*	*118,151*
5	*Trent Lott (R)*		*70.7*	*55.3*	*119,837*	*119,130*	*140,614*
	Ben Stone (D)	**	*52.4*	*44.2*	*158,844*	*163,970*	*173,492*
	MISSOURI						
1	William Clay* (D)		75.8	64.0	31,619	17,480	20,626
	Richard Funsch (R)		No Opp.	36.0	59,335	59,672	70,413
2	James Symington* (D)		No Opp.	63.5	92,056	67,938	80,167
	John Cooper, Jr. (R)		55.3	36.5	35,533	30,298	35,752
3	Leonor Sullivan (D)		93.9	69.3	34,404	29,225	34,485
	Albert Holst, Sr. (R)		66.3	30.4	5,151	5,151	6,078
4	William Randall* (D)		No Opp.	57.4	33,324	24,531	28,947
	Raymond Barrows (R)		No Opp.	42.6	6,310	5,922	6,988
5	Richard Bolling* (D)		No Opp.	62.8	25,559	25,054	29,564
	Vernon Rice (R)		No Opp.	35.6	575	442	522

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Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.	x 1.13
	NEVADA					
1	David Towell (R)	41.6%	52.2%	$ 81,779	$ 83,106	98,065
	James Bilbray (D)	52.0	47.8	174,086	178,406	211,699
	NEW HAMPSHIRE					
1	Louis Wyman*(R)	No Opp.	72.9	33,210	32,945	38,575
	Chester Merrow (D)	59.2	27.1	2,786	3,122	3,654
	James Cleveland*(R)	No Opp.	67.9	24,678	23,479	27,705
	Charles Officer (D)	No Opp.	32.1	35,065	37,030	43,675
	NEW JERSEY					
1	John Hunt*(R)	No Opp.	52.5	22,921	23,837	28,128
	James Florio (D)	79.6	47.1	36,373	36,107	42,606
2	Charles Sandman*(R)	No Opp.	65.7	11,780	11,780	13,900
	John Rose (D)	No Opp.	34.3	5,958	5,341	6,302
3	James Howard*(D)	No Opp.	53.0	70,721	62,773	74,072
	William Dowd (R)	No Opp.	47.0	50,718	50,718	59,847
4	Frank Thompson*(D)	No Opp.	58.0	51,454	48,221	56,901
	Peter Garibaldi (R)	No Opp.	42.0	8,083	7,983	9,420
5	Peter Frelinghuysen* (R)	No Opp.	62.0	20,765	20,765	24,503
	Frederick Bohen (D)	63.5	38.0	55,641	54,888	64,768
6	Jerry Litton (D)	35.7	54.6	171,635	168,642	199,098
	Russell Sloan (R)	59.8	45.4	102,269	100,059	118,070
7	Gene Taylor (R)	49.0	63.7	121,572	97,197	114,713
	William Thomas (D)	78.1	36.3	10,335	10,864	12,820
8	Richard Ichord*(D)	No Opp.	62.1	54,508	33,779	39,859
	David Countie (R)	No Opp.	37.9	10,194	9,309	10,985
9	William Hungate*(D)	No Opp.	66.5	38,197	26,147	30,853
	Robert Prange (R)	60.3	33.5	7,719	7,719	9,108
10	Bill Burlison*(D)	76.0	64.3	35,841	14,730	17,381
	Marion Svendrowski (R)	No Opp.	35.7	293	3,065	3,617
	MONTANA					
1	Richard Shoop*(R)	90.0	53.7	72,742	65,224	76,964
	Arnold Olsen (D)	44.8	46.3	50,414	54,940	64,829
2	John Melcher*(D)	No Opp.	76.1	51,025	49,092	57,929
	Richard Forester (R)	No Opp.	23.9	10,475	10,475	12,361
	NEBRASKA					
1	Charles Thone*(R)	84.0	64.2	90,130	90,130	106,353
	Darrel E. Berg (D)	No Opp.	35.8	28,655	21,704	25,611
2	John Y. McCollister*(R)	No Opp.	63.9	81,645	74,569	87,991
	Patrick L. Cooney (D)	No Opp.	36.1	21,456	22,050	26,019
3	Dave Martin*(R)	No Opp.	69.6	43,435	11,687	13,791
	Warren D. Fitzgerald (D)	54.2	30.4	9,425	9,425	11,122

6	Edwin Forsythe* (R)	No Opp.	62.8	40,228	38,6[illegible]	45,553
	Francis Brennan (D)	34.2	36.1	9,815	9,811	11,577
7	William Widnall* (R)	No Opp.	58.0	33,936	30,567	36,069
	Arthur Lesemann (D)	No Opp.	39.9	31,020	30,102	35,520
8	Robert Roe* (D)	No Opp.	63.1	66,101	66,706	78,713
	Walter Johnson (R)	No Opp.	36.9	756	776	916
9	Henry Helstoski* (D)	No Opp.	55.8	44,643	55,244	65,188
	Alfred Schiaffo (R)	74.8	44.2	59,790	60,812	71,758
10	Peter Rodino* (D)	57.4	79.7	113,169	90,115	106,336
	Kenneth Miller (R)	No Opp.	20.3	1,122	770	909
11	Joseph Minish* (D)	No Opp.	57.5	85,554	68,709	81,077
	Milton Waldor (R)	No Opp.	39.7	48,326	55,185	65,118
12	*Matthew Rinaldo (R)*	*No Opp.*	*63.5*	*130,232*	*131,790*	*15,512*
	Jerry English (D)	*68.1*	*36.1*	*36,335*	*32,839*	*38,750*
13	*Joseph Maraziti (R)*	*49.7*	*55.7*	*63,872*	*83,972*	*99,087*
	Helen Meyner (D)	*No Opp.*	*42.9*	*67,746*	*65,573*	*77,376*
14	Dominick Daniels* (D)	55.6	61.2	53,286	53,286	62,877
	Richard Bozzone (R)	70.9	34.3	2,871	6,320	7,458
	Edward Zampella (CAC)	No Opp.	3.1	7,923	7,923	9,349
15	Edward Patten* (D)	No Opp.	52.3	27,605	27,605	32,574
	Fuller Brooks (R)	No Opp.	47.7	51,333	51,081	60,276

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Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend. x 1.18
	NEW MEXICO				
1	Manuel J. Lujan* (R)	90.5%	55.7%	$ 210,173	$ 212,093 250,270
	J.E. Gallegos (D)	35.1	44.3	127,386	126,219 148,9[illegible]
2	Harold Runnels* (D)	No Opp.	72.2	99,198	91,784 108,[illegible]
	George Presson (R)	55.2	27.6	14,491	14,810 17,4[illegible]
	NEW YORK				
1	Otis Pike* (D)	No Opp.	52.5	54,327	51,842 61,174
	Joseph Boyd (R)	No Opp.	36.9	78,887	90,302 106,[illegible]
	Robert Gardiner (CON)	No Opp.	9.5	37,717	37,877 44,[illegible]
2	James Grover* (R)	No Opp.	65.8	9,967	4,054 4,784
	Fern C. Dennison (D)	No Opp.	32.7	6,864	6,325 7,464
3	*Angelo D. Roncallo (R)*	*No Opp.*	*53.1*	*89,313*	*109,552* 129,387
	Carter F. Bales (D)	*51.4*	*37.6*	*109,219*	*112,455* 132,6[illegible]
4	Norman F. Lent* (R)	No Opp.	62.4	52,825	45,306 53,461
	Elaine B. Horowitz (D)	No Opp.	35.9	20,150	27,176 32,070
5	John W. Wydler* (R)	No Opp.	62.4	50,105	44,644 52,6[illegible]
	Ferne M. Steckler (D)	No Opp.	31.7	28,369	25,333 29,8[illegible]
6	Lester L. Wolff* (D)	No Opp.	51.5	64,072	64,069 75,601
	John T. Gallagher (R)	No Opp.	48.5	36,398	45,449 53,6[illegible]
7	Joseph P. Addabbo* (D)	64.2	75.0	24,128	22,487 26,535
	John E. Hall (R)	No Opp.	20.6	1,201	1,540 1,817

8	Benjamin S. Rosenthal*(D)	No Opp.	64.7	18,892	18,739	20,112
	Frank A. La Pina (R)	No Opp.	35.3	6,279	6,279	7,467
9	James J. Delaney*(D)	55.4	93.4	56,173	56,396	66,545
10	Mario Biaggi*(D)	No Opp.	93.9	13,066	12,719	15,008
11	Frank J. Brasco*(D)	73.0	63.9	43,723	38,943	45,953
	Melvin Solomon (R)	52.6	31.3	-0-	-0-	
12	Shirley Chisholm*(D)	No Opp.	87.9	,800	4,796	5,659
	John M . Coleman (R)	No Opp.	9.7	-0-	-0-	
13	Bertram L. Podell*(D)	68.0	65.1	84,107	71,852	84,785
	Joseph P. Marcucci (R)	56.2	25.5	350	1,842	2,174
	Leonard M. Simon (LIB)	No Opp.	5.3	51,846	52,235	61,637
14	(1)John J. Rooney*(D)	54.2	53.9	117,855	110,054	129,864
	Allard K. Lowenstein (LIB)	45.8	28.1	281,028	285,475	336,861
	Francis S. Voyticky (R)	51.4	17.5	270	270	319
15	Hugh L. Carey*(D)	No Opp.	52.1	90,294	122,905	145,028
	John Gangemi (R)	No Opp.	43.0	49,519	49,296	58,169
16	*Elizabeth Holtzman (D)*	*44.5*	*65.6*	*84,724*	*104,318*	*123,075*
	Nicholas Bacchio (R)	*62.4*	*22.9*	-0-	-0-	
17	John Murphy*(D)	No Opp.	60.3	82,585	105,581	124,586
	Mario Delardino (R)	No Opp.	39.7	88,180	87,559	103,320
18	Edward Koch*(D)	No Opp.	69.9	69,295	69,295	81,768
	Jane Langley (R)	No Opp.	29.3	107,812	120,351	142,014
19	Charles Rangel*(D)	75.6	96.0	33,834	31,390	37,040
20	Bella Abzug*(D)	31.2	55.7	169,731	164,245	193,809
	Priscilla Ryan (LIB)	No Opp.	28.0	52,713	51,417	60,672
	Annette Levy (R)	No Opp.	11.8	2,360	2,360	2,785
	Harvey Michelman (COU)	No Opp.	4.1	5,274	5,261	6,208

1 Rooney and Lowenstein were both involved in a court ordered second Democratic primary.

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend. x 1.18
	NEW YORK CONT'D				
21	Herman Badillo*(D)	77.8%	86.9%	$ 52,487	$ 52,558 62,058
	Manuel Ramos (R)	22.2	11.4	26,950	26,950 31,801
22	Jonathan Bingham*(D)	55.5	76.5	127,376	126,138 148,943
	Charles Avarello (R)	No Opp.	23.5	16,460	16,416 19,371
23	Peter Peyser*(R)	No Opp.	50.4	173,528	154,567 182,389
	Richard Ottinger (D)	No Opp.	49.6	198,914	195,784 231,025
24	Ogden Reid*(D)	No Opp.	52.2	164,224	209,007 246,628
	Carl Vergari (R)	71.5	47.8	190,890	190,890 225,250
25	Hamilton Fish*(R)	No Opp.	71.7	27,072	23,208 27,385
	John Burns (D)	No Opp.	26.9	19,347	18,431 21,747
26	Benjamin Gilman (R)	57.9	4 8	100,623	112,729 133,020
	John Dow*(D)	No Opp.	39.3	68,184	52,197 61,593
	Yale Rapkin (I)	42.1	12.9	94,193	80,595 95,102
27	Howard W. Robison*(R)	No Opp.	62.2	14,998	14,853 17,527
	David H. Blazer (D)	No Opp.	29.8	1,746	2,585 3,050
28	Samuel Stratton*(D)	No Opp.	80.0	51,712	27,297 32,210
	John Ryan, Jr. (R)	No Opp.	20.0	1,299	1,308 1,543
29	Carleton J. King*(R)	No Opp.	69.9	24,555	17,567 20,729
	Harold B. Gordon (D)	No Opp.	30.1	2,849	2,849 3,362

30	Robert McEwen* (R)	85.4	66.0	12,261	9,861 11,662
	Ernest J. La Baff (D)	No Opp.	34.0	9,938	10,019 11,822
31	*Donald J. Mitchell (R)*	*33.3*	*51.0*	*82,811*	*81,740* [illegible]
	John Buckley (Lib)	*No Opp.*	*3.7*	*39,643*	*39,643* 46,777
	Robert Castle (D)	*No Opp.*	*33.1*	*91,881*	*91,881* 108,480
	Franklin Nichols (Amer.)	*No Opp.*	*6.2*	*18,358*	*18,358* 21,662
32	James Hanley*(D)	No Opp.	57.2	76,134	63,011 74,353
	Leonard Koldin (R)	No Opp.	42.8	66,937	75,175 88,707
33	*William Walsh (R)*	*No Opp.*	*71.4*	*22,816*	*34,795* 41,058
	Clarence Kadys (D)	*No Opp.*	*28.6*	*19,283*	*19,283* 22,754
34	Frank Horton*(R)	No Opp.	72.1	37,909	32,326 38,145
	Jack Rubens (D)	No Opp.	23.5	5,412	5,411 6,385
35	Barber Conable*(R)	No Opp.	67.9	21,239	18,907 22,308
	Terence Spencer (D)	No Opp.	28.4	7,473	6,753 7,968
36	Henry Smith*(R)	No Opp.	57.3	72,547	72,670 85,760
	Richard McCarthy (D)	No Opp.	42.7	61,774	61,774 72,893
37	Thaddeus Dulski* (D)	No Opp.	72.2	13,206	8,018 9,461
	William McLaughlin (R)	No Opp.	27.8	3,316	3,316 3,913
38	Jack Kemp*(R)	No Opp.	73.2	93,717	89,617 105,748
	Anthony La Russo (D)	No Opp.	26.8	15,200	20,342 24,004
39	James Hastings*(R)	No Opp.	71.9	24,668	17,794 20,997
	Wilbur White (D)	No Opp.	28.1	450	1,663 1,962

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[000242]

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend. x 1.18
	NORTH CAROLINA				
1	Walter B. Jones*(D)	No Opp.	68.8%	$ 19,959	$ 8,727 10,298
	Gordon J. Bonner (R)	53.0%	31.2	4,394	17,057 20,127
2	L.H. Fountain*(D)	58.8	71.6	44,177	40,630 47,943
	Erick P. Little (R)	No Opp.	28.4	19,002	19,002 22,422
3	David N. Henderson*(D)	79.3	No Opp.	7,590	4,258 5,024
4	*Ike F. Andrews (D)* **	*52.1*	*50.4*	*121,328*	*110,947* 130,917
	Jack R. Hawke (R)	*No Opp.*	*49.6*	*77,678*	*77,573* 91,536
5	Wilmer Mizell*(R)	No Opp.	64.8	49,114	37,264 43,972
	Brooks Hays (D)	No Opp.	35.2	34,570	34,358 40,542
6	Richardson Preyer*(D)	No Opp.	93.9	9,642	8,657 10,215
7	*Charles Rose III (D)* **	*55.6*	*60.4*	*91,298*	*86,933* 102,581
	Jerry Scott (R)	*50.2*	*38.7*	*11,177*	*12,402* 14,634
8	Earl Ruth*(R)	No Opp.	60.2	41,016	29,110 34,350
	Richard Clark (D)	No Opp.	39.8	51,809	51,809 61,135
9	*James Martin (R)*	*80.4*	*58.9*	*135,674*	*149,809* 176,417
	James Beatty (D)	*84.1*	*41.1*	*71,856*	*63,107* 74,466
10	James T. Broyhill*(R)	No Opp.	72.5	40,568	34,251 40,416
	Paul Beck (D)	No Opp.	27.5	360	357 421
11	Roy Taylor*(D)	No Opp.	59.6	22,174	21,721 25,631
	Jesse Ledbetter (R)	No Opp.	40.4	11,085	12,066 14,238

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[000243]

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.	x 1.18
	NORTH DAKOTA					
1	Mark Andrews *(R)	No Opp.	72.7	58,227	58,196	68,671
	Richard Ista (D)	No Opp.	27.1	18,935	18,935	22,343
	OHIO					
1	William Keating *(R)	No Opp.	70.3	76,450	71,648	84,781
	Karl Heiser (D)	No Opp.	29.7	12,594	13,453	15,875
2	Donald Clancy *(R)	88.8	62.8	45,923	27,034	31,900
	Penny Manes (D)	No Opp.	37.2	8,859	8,859	10,454
3	Charles Whalen *(R)	No Opp.	76.2	22,178	17,973	21,208
	John Lelak (D)	No Opp.	23.8	3,285	3,930	4,637
4	*Tennyson Guyer (R)*	*72.3*	*62.7*	*40,462*	*40,013*	*47,215*
	Dimitri Nicholas (D)	*32.1*	*37.3*	*38,412*	*38,412*	*45,326*
5	Delbert Latta *(R)	No Opp.	72.7	31,796	24,016	28,339
	Bruce Edwards (D)	No Opp.	27.3	4,132	3,645	4,301
6	William Harsha *(R)	No Opp.	No Opp.	2,500	1,665	1,965
7	Clarence Brown *(R)	No Opp.	73.3	51,111	31,534	37,210
	Dorothy Franke (D)	No Opp.	26.7	2,652	2,838	3,349
8	Walter Powell *(R)	67.0	52.2	67,814	66,098	77,996
	James Ruppert (D)	81.0	47.8	70,813	73,706	86,973
9	Thomas Ashley *(D)	89.0	69.1	27,781	17,416	20,551
	Joseph Richards (R)	46.9	30.9	20,019	20,019	23,622
	OHIO CONT'D					
10	Clarence Miller *(R)	86.9%	73.2%	$ 40,542	$ 26,983	31,840
	Robert Wheeley (D)	59.2	26.8	4,251	5,452	6,433
11	William Stanton *(R)	No Opp.	68.2	21,743	19,853	23,427
	Dennis Callahan (D)	50.5	31.8	23,256	22,822	26,930
12	Samuel Devine *(R)	No Opp.	56.1	67,862	51,930	61,277
	James Goodrich (D)	No Opp.	43.9	105,987	125,145	147,671
13	Charles Mosher *(R)	80.6	68.1	19,502	13,218	15,597
	John Ryan (D)	No Opp.	31.9	5,593	5,593	6,600
14	John Seiberling *(D)	82.3	74.4	27,649	26,325	31,064
	Norman Holt (R)	77.5	25.6	4,779	6,391	7,541
15	Chalmers Wylie *(R)	No Opp.	65.8	65,945	53,091	62,647
	Manly McGee (D)	50.1	31.5	20,475	23,398	27,610
16	*Ralph Regula (R)*	*85.7*	*57.3*	*81,468*	*81,383*	*96,032*
	Virgil Musser (D)	*57.6*	*42.7*	*24,800*	*23,328*	*27,527*
17	John Ashbrook *(R)	74.1	57.4	58,173	58,173	68,644
	Raymond Beck (D)	45.8	38.7	13,062	13,062	15,413
18	Wayne Hays *(D)	84.4	70.2	34,318	20,009	23,611
	Robert Stewart (R)	No Opp.	29.8	4,221	3,300	3,894
19	Charles Carney *(D)	57.1	64.0	69,148	54,037	63,764
	Norman Parr (R)	No Opp.	36.0	21,306	21,307	25,142

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.	x 1.12
20	James Stanton*(D)	76.0	84.3	44,792	44,272	52,341
	Thomas Vilt (R)	No Opp.	11.9	8,157	8,157	9,625
21	Louis Stokes*(D)	82.5	81.1	17,718	17,718	20,907
	James Johnson (R)	No Opp.	11.3	6,992	7,531	8,887
22	Charles A. Vanik*(D)	No Opp.	63.9	36,067	36,067	42,559
	Donald Gropp (R)	No Opp.	32.6	114,646	120,430	142,107
23	William Minshall*(R)	87.1	49.4	133,233	127,212	150,110
	Dennis Kucinich (D)	51.0	47.3	28,096	28,096	33,153
	OKLAHOMA					
1	James R. Jones (D)	60.4	54.5	63,405	64,830	76,499
	James Hewgley (R)	50.8	43.7	179,986	179,986	212,383
2	Clem McSpadden (D)	62.3	71.1	93,654	93,103	109,862
	Emery Toliver (R)	No Opp.	28.9	7,787	7,787	9,189
3	Carl Albert*(D)	84.7	93.4	39,170	7,275	8,585
4	Tom Steed*(D)	87.5	71.3	17,141	6,609	7,799
	William E. Crozier (R)	No Opp.	28.7	3,310	3,622	4,274
5	John Jarman*(D)	65.0	60.4	66,351	27,534	32,490
	Llewellyn Keller (R)	51.0	39.6	8,751	7,798	9,202
6	John N. Camp* (R)	No Opp.	72.7	33,492	33,492	39,521
	William Patrick Schmitt (D)	No Opp.	27.3	5,310	5,310	6,266

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[000244]

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.	x 1.12
	OREGON					
1	Wendall Wyatt* (R)	No Opp.	68.6%	$ 75,093	$ 75,093	88,610
	Ralph Bunch (D)	66.9%	31.4	6,871	6,810	8,036
2	Al Ullman* (D)	No Opp.	No Opp.	61,106	13,307	15,702
3	Edith Green* (D)	No Opp.	62.4	41,726	41,031	48,417
	Michael Walsh (R)	No Opp.	37.5	58,080	58,403	68,916
4	John Dellenback* (R)	78.7	62.5	54,659	49,711	58,659
	Charles Porter (D)	33.1	37.4	19,406	20,635	24,349
	PENNSYLVANIA					
1	William Barrett* (D)	No Opp.	66.1	16,261	16,261	19,188
	Gus Pedicone (R)	No Opp.	33.2	44,574	43,547	51,385
2	Robert Nix* (D)	47.0	70.1	7,837	4,073	4,806
	Frederick Bryant (R)	71.4	29.9	5,865	4,936	5,825
3	William Green* (D)	57.2	63.3	66,088	65,107	76,826
	Alfred Marroletti (P)	No Opp.	36.2	17,813	16,938	19,987
	Anthony Monteiro (Com)	No Opp.	0.5	13,106	12,861	15,176
4	Joshua Eilberg* (D)	No Opp.	55.9	70,028	61,471	72,536
	William Pfender (R)	No Opp.	44.1	101,820	102,923	121,449
5	John Ware* (R)	49.5	64.7	29,506	26,200	30,916
	Brower Yerger (D)	52.3	35.3	6,230	6,841	8,072

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Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.	Expend. x 1.18
6	Gus Yatron* (D)	No Opp.	64.5	60,979	56,237	66,359
	Eugene Rubler (R)	63.8	34.6	17,277	16,623	19,615
7	Lawrence Williams* (R)	No Opp.	60.6	81,955	73,023	86,167
	Stuart Bowie (D)	No Opp.	39.4	13,881	11,879	14,017
8	Edward Biester* (R)	80.3	64.4	17,862	17,345	20,467
	Alan Williams (D)	45.3	35.6	25,236	24,219	28,578
9	E.G. Shuster (R)	61.3	61.8	64,231	73,852	87,145
	Earl Collins (D)	No Opp.	38.2	17,461	17,815	21,022
10	Joseph McDade* (R)	No Opp.	73.6	26,943	24,934	29,422
	Stanley Coveleskie (D)	67.3	26.4	4,049	6,281	7,412
11	Daniel Flood* (D)	88.0	68.3	28,688	26,393	31,144
	Donald Ayers (R)	55.6	31.7	10,115	10,113	11,933
12	John Saylor* (R)	72.1	68.1	38,839	34,992	41,291
	Joseph Murphy (D)	No Opp.	31.9	20	95	112
13	Lawrence Coughlin* (R)	No Opp.	66.6	36,941	36,423	42,979
	Katherine Camp (D)	59.9	33.4	35,301	34 263	40,430
14	William Moorhead* (D)	85.7	59.3	38,313	36,205	42,722
	Roland Catarinella (R)	No Opp.	40.4	82,409	78,400	92,512
15	Fred Rooney* (D)	86.0	60.8	34,858	29,315	34,592
	Wardell Steigerwalt (R)	No Opp.	39.2	2,170	2,170	2,561
16	Edwin Eshleman* (R)	No Opp.	73.5	15,433	14,041	16,568
	Shirley Garrett (D)	No Opp.	26.5	1,305	2,242	2,646

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Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend.	Expend. x 1.18
	PENNSYLVANIA CONT'D					
17	Herman Schneebeli*(R)	No Opp.	72.2%	$ 59,376	$ 19,311	22,787
	Donald Rippon (D)	No Opp.	26.5	2,230	2,386	2,815
18	H. John Heinz* (R)	No Opp.	72.8	109,700	103,542	122,180
	Douglas Walgren (D)	No Opp.	27.2	3,320	3,123	3,685
19	George Goodling*(R)	60.0%	57.5	43,862	37,168	43,858
	Richard Noll (D)	No Opp.	41.2	13,159	13,159	15,528
20	Joseph Gaydos*(D)	No Opp.	61.5	42,522	44,379	52,367
	William Hunt (R)	No Opp.	38.5	64,701	63,843	75,335
21	John Dent*(D)	64.5	62.0	46,093	32,024	37,788
	Thomas Young (R)	No Opp.	38.0	325	325	384
22	Thomas Morgan*(D)	72.5	60.8	44,340	32,157	37,945
	James Montgomery (R)	55.6	39.2	807	807	952
23	Albert Johnson*(R)	61.4	56.5	28,907	31,582	37,267
	Ernest Kassab (D)	56.9	43.5	53,656	66,948	79,019
24	Joseph Vigorito*(D)	86.2	68.8	13,692	13,504	15,935
	Alvin Levenhagen (R)	No Opp.	31.2	11,856	10,479	12,365
25	Frank Clark*(D)	No Opp.	55.8	20,350	26,444	31,204
	Gary Myers (R)	64.9	44.2	6,963	8,910	10,514

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Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend. x 1.18
	RHODE ISLAND				
1	Fernand St. Germain*(D)	No Opp.	62.3	51,186	48,071 56,724
	John Feeley (R)	No Opp.	34.7	20,371	20,371 24,038
2	Robert Tiernan*(D)	No Opp.	63.1	42,034	47,418 55,953
	Donald Ryan (R)	No Opp.	36.9	6,000	5,012 5,914
	SOUTH CAROLINA				
1	Mendel Davis*(D)	72.5	54.5	86,009	84,377 99,565
	Sidi Limehouse (R)	No Opp.	45.5	101,225	100,902 119,064
2	Floyd Spence*(R)	No Opp.	No Opp.	20,676	5,936 7,004
3	W. J. Bryan Dorn * (D)	No Opp.	75.2	25,649	24,797 29,260
	Roy Ethridge (R)	No Opp.	24.8	5,780	5,849 6,902
4	James Mann*(D)	No Opp.	66.1	35,515	35,475 41,861
	Wayne Whatley (R)	No Opp.	33.9	13,913	14,322 16,900
5	Tom Gettys*(D)	No Opp.	60.9	26,655	22,640 26,715
	Leonard Phillips (R)	No Opp.	39.1	14,468	14,349 16,932
6	*Edward Young (R)*	*No Opp.*	*54.4*	*90,257*	*93,590 110,436*
	John Jenrette (D) **	*50.6*	*45.6*	*94,019*	*94,019 110,942*
	SOUTH DAKOTA				
1	Frank Denholm*(D)	No Opp.	60.5	41,062	40,445 47,725
	John Vickerman (R)	No Opp.	39.5	53,017	52,508 62,054
2	*James Abdnor (R)*	*64.4*	*54.9*	*96,252*	*96,252 113,578*
	Patrick Mc Keever (D)	*No Opp.*	*45.1*	*62,271*	*62,235 73,437*

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend. x 1.18
	TENNESSEE				
1	James Quillen*(R)	No Opp.	79.4%	$ 17,065	$ 3,799 4,483
	Bernard Cantor (D)	No Opp.	20.6	5,807	5,807 6,852
2	John Duncan*(R)	No Opp.	No Opp.	8,928	9,585 11,310
3	Lamar Baker*(R)	No Opp.	55.2	78,502	77,199 91,095
	Howard Sompayrac (D)	No Opp.	41.9	40,856	39,974 47,169
4	Joe L. Evins*(D)	No Opp.	81.1	12,455	11,520 13,594
	Billy Joe Finney (R)	No Opp.	18.9	500	1,738 2,051
5	Richard Fulton*(D)	73.2%	62.6	80,219	83,697 98,762
	Alfred T. Adams, Jr.(R)	72.9	36.8	99,493	97,482 115,029
6	Robin L. Beard (R)	76.8	55.3	149,697	151,605 178,894
	William R. Anderson*(D)	60.7	43.1	98,087	105,022 123,926
7	Ed Jones*(D)	No Opp.	70.5	48,600	81,789 96,511
	Stockton Adkins (R)	No Opp.	29.5	20,307	20,136 23,760
8	Dan Kuykendall* (R)	No Opp.	55.4	127,913	119,023 140,447
	J.O. Patterson, Jr. (D)	74.9	44.1	83,433	67,444 79,584
	TEXAS				
1	Wright Patman*(D)	57.5	No Opp.	22,025	26,423 31,179
2	*Charles Wilson (D)*	*63.0*	*73.8*	*87,836*	*93,5[illegible] 110,[illegible]*
	Charles Brightwell (R)	*65.2*	*26.2*	*2,772*	*2,764 3,262*

Cong. Dist.	Source: Common Cause Campaign Monitoring Project		Primary Vote %	General Election Vote %	Contrib.	Expend.	x 1.18
	TEXAS CONT'D						
16	Richard White* (D)		No Opp.	No Opp.	$ 5,197	$ 2,009	2,371
17	Omar Burleson* (D)		No Opp.	No Opp.	17,062	5,341	6,302
18	*Barbara Jordan (D)*		*80.4%*	*80.6%*	*61,886*	*57,065*	*67,337*
	Paul Merritt (R)		*79.0*	*18.2*	*3,875*	*3,257*	*3,843*
19	George Mahon* (D)		No Opp.	No Opp.	3,288	4,358	5,142
20	Henry Gonzalez* (D)		No Opp.	96.9	1,612	1,012	1,194
	Steve Wattenmaker (SW)		No Opp.	3.1	-0-	-0-	
21	O.C. Fisher* (D)		No Opp.	56.8	26,198	18,463	21,786
	Doug Harlan (R)		60.3	43.2	34,422	32,810	38,716
22	Bob Casey* (D)		69.5	70.2	97,311	93,322	110,120
	Jim Griffin (R)		73.0	29.0	3,122	3,108	3,667
23	Abraham Kazen, Jr.* (D)		75.0	No Opp.	17,678	8,354	9,858
24	*Dale Milford (D)*	**	*54.2*	*65.1*	*94,410*	*92,363*	*109,028*
	Courtney Roberts (R)	**	*72.3*	*34.9*	*33,247*	*33,247*	*39,231*
	UTAH						
1	Gunn McKay* (D)		No Opp.	55.4	52,647	52,320	61,738
	Robert Wolthuis (R)		53.0	42.0	61,669	62,472	73,717

2 Contributions for W.R. Poage exclude over $10,000 in returned contributions.

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend. x 1.18
	VERMONT				
1	Richard Mallary* (R)	No Opp.	65.0	11,289	4,085 4,820
	William Meyer (D)	No Opp.	35.0	5,122	5,193 6,128
	VIRGINIA				
1	Thomas N. Downing* (D)	No Opp.	78.1	47,601	48,409 57,123
	Kenneth Wells (R)	No Opp.	21.9	34,376	35,264 41,612
2	William G. Whitehurst* (R)	No Opp.	73.4	52,102	45,864 54,120
	Charles L. Burlage (D)	No Opp.	26.6	42,790	42,790 50,492
3	David Satterfield* (D)	No Opp.	No Opp.	3,476	-0-
4	Robert W. Daniel, Jr. (R)	No Opp.	47.1	59,237	58,140 68,725
	Robert E. Gibson (D)	No Opp.	37.5	33,902	40,546 47,844
5	W.C. Daniel, Jr.* (D)	No Opp.	No Opp.	3,892	3,429 4,046
6	Caldwell Butler (R)	No Opp.	54.6	104,127	116,363 137,308
	Willie M. Anderson (D)	No Opp.	39.2	49,578	49,078 57,912
7	Kenneth Robinson* (R)	No Opp.	66.2	108,336	73,177 87,057
	Murat Williams (D)	No Opp.	33.8	44,735	44,972 53,067
8	Stanford E. Parris (R)	63.3	44.4	111,817	109,271 128,940
	Robert F. Horan, Jr. (D)	42.2	37.8	53,670	53,129 62,692
	William Durland (I)	No Opp.	13.7	35,777	41,176 48,587
	Robert Harris (I)	No Opp.	4.1	18,885	18,956 22,368
9	William C. Wampler* (R)	No Opp.	71.9	35,304	23,937 28,246
	Zane Dale Christian (D)	No Opp.	26.4	15,708	29,534 34,850

Cong. Dist.	Source: Common Cause Campaign Monitoring Project	Primary Vote %	General Election Vote %	Contrib.	Expend. x 1.18
	VIRGINIA CONT'D				
10	Joel T. Broyhill* (R)	No Opp.	56.3%	$ 185,237	$ 141,290 166,722
	Harold Miller (D)	No Opp.	43.7	93,087	91,501 107,971
	WASHINGTON				
1	Joel Pritchard (R)	75.8%	50.3	112,631	112,933 133,261
	John Hempelmann (D)	71.2	49.1	84,544	84,136 99,280
2	Lloyd Meeds* (D)	No Opp.	60.5	53,655	42,062 49,633
	Bill Reams (R)	63.3	39.5	54,717	54,717 64,566
3	Julia Hansen* (D)	63.5	66.3	61,016	43,351 51,154
	R.C. McConkey (R)	61.8	33.7	4,318	4,309 5,085
4	Mike McCormack* (D)	No Opp.	52.1	70,543	66,130 78,033
	Stewart Bledsoe (R)	56.6	47.9	141,560	141,560 167,041
5	Thomas Foley* (D)	No Opp.	81.3	42,890	27,476 32,422
	Clarice Privette (R)	No Opp.	18.7	500	500 590
6	Floyd Hicks* (D)	No Opp.	72.1	33,854	7,770 9,169
	Thomas Lowry (R)	No Opp.	27.9	23,995	23,888 28,188
7	Brock Adams* (D)	No Opp.	85.4	77,640	36,058 42,548
	J.J. Freeman (R)	No Opp.	12.1	512	512 604
	WEST VIRGINIA				
1	Robert Mollohan* (D)	No Opp.	69.4	30,836	29,619 34,950
	George Kapnicky (R)	No Opp.	30.6	2,387	2,392 2,823

2	Harley Staggers* (D)	73.0	70.0	29,520	29,520
	David Dix (R)	No Opp.	30.0	3,847	3,897
3	John Slack* (D)	No Opp.	63.7	26,018	12,019
	David Higgins (R)	No Opp.	36.3	4,356	4,358
4	Ken Hechler* (D)	52.2	61.0	21,976	20,24[illegible]
	Joe Neal (R)	No Opp.	39.0	36,398	36,362
	WISCONSIN				
1	Les Aspin* (D)	91.4	64.4	82,852	70,326
	Merril Stalbaum (R)	43.1	34.9	12,062	12,062
2	Robert Kastenmeier* (D)	No Opp.	68.2	38,861	24,997
	Michael Kelly (R)	58.5	31.4	23,080	23,080
3	Vernon Thomson* (R)	79.6	54.7	76,866	76,853
	Walter Thoresen (D)	39.0	44.6	49,202	49,328
4	Clement Zablocki* (D)	83.2	75.7	16,782	15,871
	Philip Mrozinski (R)	No Opp.	22.8	375	375
5	Henry Reuss* (D)	No Opp.	77.3	14,829	12,613
	Frederick Van Hecke (R)	No Opp.	20.4	4,730	4,743
6	William Steiger* (R)	No Opp.	65.8	34,708	33,599
	James Adams (D)	No Opp.	32.0	6,546	6,528
7	David Obey* (D)	No Opp.	62.8	74,427	64,054
	Alvin O'Konski* (R)	55.0	37.2	42,480	42,772
8	*Harold Froehlich (R)*	*38.1*	*50.4*	*85,759*	*76,640*
	Robert Cornell (D)	*72.9*	*48.6*	*34,413*	*28,662*
9	Glenn Davis* (R)	58.6	61.4	72,879	59,737
	Ralph Fine (D)	No Opp.	36.7	6,579	6,579
	WYOMING				
1	Teno Roncalio* (D)	No Opp.	51.7	$ 65,646	$ 50,548

[000249]

6. The computer print-out, supplied by Common Cause, reflecting individual contributions (including loans) in excess of $500 by candidates for the 1974 Congressional campaigns, in response to plaintiffs' request for production of documents is hereby adopted and incorporated herein by reference as Exhibit C. This Exhibit will be furnished to this court by agreement with defendants and intervening defendants at a later date. Defendants and intervening defendants have requested that this document remain under seal; plaintiffs have no present objection to this request.

7. The following is a list of loans received and repaid by 1974 Congressional candidates:

LOANS RECEIVED AND REPAID

1974 U. S. Senate Campaigns

State	Candidate	Amount of Loans received & repaid
AK	cC. R. Lewis	1,400
AZ	cJ. Marshall	5,000
AR	-J. [illegible]. Jones	4,175
CO	*IG. W. Hart	8,959
CT	cJ. H. Brannen	750
FL	-J. M. Eckerd	96,050
IL	cI. Flory	500
IL	*+A. E. Stevenson	5,000
IA	-D. M. Stanley	12,000
KY	*I W. H. Ford	20,000
LA	*+ R. B. Long	75,000
MO	c T. B. Curtis	6,000
NV	*o P. Laxalt	57,500
NV	- H. Reid	[illegible] 42,200
NY	*+ J. K. Javits	5,000
NC	o R. B. Morgan	213,234
OH	o J. H. Glenn	78,665
OH	- R. J. Perk	12,000
PA	c Flaherty	6,887
SD	*+ G. S. McGovern	75,000
SD	c L. K. Thorsness	[illegible]0 5,900
VT	- R. W. Mallary	6,000
WI	c T. E. Petri	180
WA	c J. Metcalf	5,000

[000251]

LOANS RECEIVED AND REPAID

1974 House Campaigns

State-District		Candidate	Amount of Loan received & repaid
AK-00	c	W. L. Hensley	9,510
AZ-01	c	P. M. Fullinwider	4,000
AZ-03	c	L. P. Bosch	3,500
AZ-04	c	B. T. Brown	7,436
AR-03	c	B. Clinton	10,000
CA-05	c	T. Caylor	250
CA-08	*+	R. V. Dellums	4,000
	c	J. Redden	1,010
CA-09	c	E. Adams	6,015
	*I	F. H. Stark	18,860
CA-13	o	N. Y. Mineta	400
CA-19	*I	J. D. Lagomarsino	8,000
CA-20	c	A. Mathews	3,000
CA-22	c	R. R. Hallin	11,700
CA-23	c	J. E. Roberts	1,900
CA-24	o	H. A. Waxman	6,379
CA-29	No+	A. F. Hawkins	3,000
CA-31	c	N. A. Hodges	1,050
CA-35	*I	J. Lloyd	3,100
CA-36	c	J. B. Osgood	1,300
CA-37	c	B. R. Vincent	2,425
CA-38	o	J. M. Patterson	12,851

899

CA-38	-	D. Rehmann	18,931
CA-39	c	W. E. Farris	350
CA-43	c	B. Bandes	796
CO-01	c	F. K. Southworth	10,000
CO-04	c	J. S. Carroll	10,000
CT-01	c	F. MacBuckley	1,705
CT-02	o	C. J. Dodd	5,000
CT-06	o	A. J. Moffett	15,000
DE-00	c	J. R. Soles	5,386
GA-01	*+	R. B. Ginn	4,500
GA-03	*+	J. Brinkley	4,000
GA-04	+L	B. B. Blackburn	14,500
GA-04	*I	E. H. Levitas	5,000
GA-06	c	N. L. Gingrich	1,088
GA-07	-	J. Q. Collins, Jr.	2,300
HI-02	c	C. W. Coray	2,500
ID-01	c	J. R. Cox	15,089
IL-04	c	R. A. Rodger	6,080
IL-06	o	H. J. Hyde	4,500
IL-13	c	S. W. Beltham	2,289
IL-15	-	C. D. Carlson	5,000
IL-20	c	P. F. Mack	1,510
IL-21	*+	E. R. Madigan	3,600
IL-24	-	V. Oshel	6,000
IL-24	o	P. Simon	13,500
IN-06	*+	D. W. Evans ✓	5,000
IN-07	c	E. C. Tipton	3,118
IN-08	*I	F. H. Hayes	500
IN-08	+L	R. H. Zion	15,000

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[000252]

LOANS RECEIVED AND REPAID

1974 House Campaigns

State-District		Candidate	Amount of Loan received & repaid
IN-09	*+	L. H. Hamilton	150
IA-01	*+	E. D. Mezvinsky	3,300
IA-02	-	T. Riley	2,500
IA-02	o	M. Blouin	19,400
IA-03	-	S. Rapp	3,000
IA-04	c	C. H. Dick, Jr.	3,000
IA-05	*I	T. Harkin	1,200
KS-02	o	M. E. Keys	4,700
KS-02	-	J. C. Peterson	18,416
KS-03	c	S. J. Wells	13,171
ME-01	*I	D. F. Emery	4,000
MD-01	*+	R. E. Bauman	3,000
MD-08	c	S. Kramer	3,000
MA-03	-	D. J. Rowe	8,000
MA-04	*+	R. F. Drinan	1,985
MA-10	c	B. F. Monahan	3,125
MI-02	c	J. S. Reuther	2,370
MI-03	c	P. H. Todd	2,000
MI-05	c	P. G. Goebel, Jr.	1,754
MI-06	o	R. M. Carr	4,610
MI-18	+L	R. J. Huber	7,428

MI-18	*I	J. J. Blanchard	6,000
MI-19	c	G. F. Montgomery	720
MN-01	c	U. Scott	900
MN-02	-	S. G. Babcock	925
MN-03	c	R. E. Riggs	860
MN-06	-	J. Grunseth	10,000
MN-06	o	R. Nolan	4,000
MN-08	o	J. L. Oberstar	1,139
MS-02	*+	D. R. Bowen	6,000
MS-04	c	K. L. Dean	800
MO-02	c	H. C. Ohlendorf	5,000
MO-09	c	M. R. Bischof, Jr.	1,500
MT-01	*I	M. S. Baucus	5,800
NB-02	c	C. D. Lynch	7,000
NH-01	-	D. A. Banks	17,500
NH-01	o	N. E. D'Amours	4,950
NJ-01	*I	J. J. Florio	3,000
NJ-02	*I	W. J. Hughes	2,000
NJ-02	+L	C. W. Sandman	10,000
NJ-05	-	F. M. Bohen	2,250
NJ-05	o	M. Fenwick	5,000
NJ-05	-	L. F. Newton	350
NJ-09	c	H. A. Pareti	5,000
NJ-13	*I	H. S. Meyner	3,190
NJ-15	c	E. J. Hammesfahn	136
NM-01	c	R. A. Mondragon	7,466
NY-03	+L	A. D. Roncallo	4,500
NY-04	c	F. Ornstein	300
NY-05	c	A. K. Lowenstein	9,600
NY-05	*+	J. W. Wydler	10,000

[000253]

LOANS RECEIVED AND REPAID

1974 House Campaigns

State-District	Candidate	Amount of Loan received & repaid
NY-08	*+ B. S. Rosenthal	700
NY-11	o J. H. Scheuer	36,000
NY-12	*+ S. Chisholm	1,600
NY-13	o S. J. Solarz	1,500
NY-14	- D. H. Elliot	6,500
NY-15	- A. D. Canade	5,000
NY-19	*+ C. B. Rangel	482
NY-26	c J. G. Dow	1,729
NY-32	c W. E. Bush	842
NY-33	c R. H. Bockman	258
NY-34	c I. L. Gossin	2,000
NY-35	c M. J. Costanza	3,000
NY-36	o J. J. LaFalce	5,000
NY-37	- J. R. Bala	1,400
NC-04	*+ Ike Andrews	2,500
NC-06	*+ R. Preyer	6,500
NC-06	c R. S. Ritchie	1,000
NC-07	No+ C. G. Ross III	6,000
NC-09	*+ J. G. Martin	2,000
NC-09	c M. Short	1,000
OH-01	+L T. A. Luken	5,000

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OH-02	c E. W. Wolterman	250
OH-06	c L. A. Wood	1,000
OH-08	o T. N. Kindness	6,500
OH-09	c C. S. Finkbeiner	5,500
OH-12	c F. Ryan	2,000
OH-13	c F. M. Ritenauer	500
OK-02	- R. F. Keen	250
OK-02	o T. M. Risenhoover	79,750
OR-01	o L. AuCoin	10,250
OR-03	o R. B. Duncan	7,400
OR-03	- J. Peacentini	22,200
PA-07	- S. J. McEwen	25,000
PA-08	c W. B. Moyer	3,193
PA-12	c H. M. Fox	300
PA-12	*+ J. P. Murtha	8,500
PA-16	c M. J. Minney	800
PA-18	*+ H. J. Heinz III	15,000
PA-19	- A. L. Berger	5,000
PA-23	c Y. Mast	1,454
SC-02	c M. J. Peny	4,530
SD-01	*I L. Pressler	1,875
SD-02	c J. M. Wieland	5,000
TN-03	+L E. L. Baker	5,000
TN-03	*I M. Lloyd	10,000
TN-08	*I H. E. Ford	5,000
TX-05	*+ A. W. Steelman	185
TX-12	c J. S. Garvey	16,500
TX-13	+L R. D. Price	74,000
TX-14	No+ J. Young	500
TX-21	o R. Krueger	[illegible] 31,000

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[000254]

LOANS RECEIVED AND REPAID

1974 House Campaigns

State-District		Candidate	Amount of Loan received & repaid
UT-01	c	R. W. Inkley	387
VT-00	-	F. J. Cain	7,500
VA-02	c	R. R. Richards	260
VA-04	c	L. E. Schlitz	4,500
VA-09	*+	W. C. Wampler	5,000
WA-03	o	D. Bonker	6,900
WA-03	-	L. A. Kramer	11,000
WI-03	*I	A. Baldus	1,500
WI-09	-	L. S. Adelman	500
WV-03	c	W. L. Larcamp	300
WV-01	c	J. A. Laurita	7,700
WY-00	c	T. F. Stroock	9,500

Code

c - Challenger who lost to incumbent

*I - Challenger who beat incumbent

*+ - Incumbent who won

+L - Incumbent who lost

o - Open Election win

- - Open Election loss

No+ - Incumbent with no opposition

[000255]

8. The following is a chart of 1974 Senate races in which challengers to incumbents received 45 percent or more of the vote. "Overage" means amounts received in contributions (including loans) in excess of $1,000 per individual and in excess of $5,000 per political committee, but excluding any such excess received prior to September 1, 1973.

[000256]

1974 SENATE RACES

	Percent of Vote	Overage
Indiana		
* Birch Bayh	50.7	105,231
Richard Cugar	46.4	39,911
Kansas		
* Robert Dole	50.9	62,581
William R. Roy	49.1	12,577
North Dakota		
* Milton R. Young	48.4	6,000
Guy	48.3	9,500

Oklahoma		
* Bellmon	49.4	27,600
Edmondson	48.9	-0-
Pennsylvania		
* Schweiker	53.0	19,536
Flaherty	45.9	11,200
South Dakota		
* McGovern	53.0	5,000
Thorsness	47.0	22,207

9. The following is a chart of 1974 House races in which challengers to incumbents received 45 percent or more of the vote. "Overage" has the same meaning as stated in No. 8 hereof.

1974 HOUSE RACES

	Cong. Dist.		Percent of General Election Vote	Overage
		Alaska		
	1	*D. Young	53.8	6,370
		W. Hensley	46.2	3,650
		Arizona		
	3	*S. Steiger	51.1	---
		P. Bosch	48.9	3,000
		Arkansas		
	3	*J. P. Hammerschmidt	51.8	---
		B. Clinton	48.2	5,100
		California		
	16	*B. Talcott	49.2	2,000
		J. Camacho	47.8	1,000
W	17	J. Krebs	51.9	---
		*R. Mathis	48.1	1,000
	18	*W. Ketchum	52.7	---
		G. Seielstad	47.3	---
W	35	J. Lloyd	50.3	---
		*V. V. Veysey	49.7	---
		Colorado		
W	2	T. E. Wirth	51.9	---
		*D. G. Brotzman	48.0	---
	4	*J. P. Johnson	52.0	---
		J. S. Carroll	48.0	---

* Incumbent
W - Races in which a challenger beat an incumbent.

	Cong. Dist.		Percent of General Election Vote	Overage
		Connecticut		
	4	*S. B. McKinney	53.2	---
		J. Kellis	45.2	2,869
	5	*R. A. Sarasin	50.4	2,347
		W. R. Ratchford	48.0	150
		Florida		
	12	*J. H. Burke	51.0	---
		C. Friedman	49.0	500
		Georgia		
W	4	Elliott H. Levitas	55.1	790
		*B. B. Blackborn	44.9	1,500
	6	*J. Flynt, Jr.	51.5	650
		N. Gingrich	48.5	525
		Illinois		
W	3	M. A. Russo	52.6	240
		*R. Hanrahan	47.4	---
W	10	A. J. Mikva	50.9	8,100
		*S. H. Young	49.1	12,025
	13	*R. McCrory	54.5	---
		S. Beetham	45.5	---
	17	*G. M. O'Brien	51.5	1,500
		J. Houlihan	48.5	785
	18	*R. Michel	54.8	---
		S. Nordvall	45.2	---

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* Incumbent
W - Races in which a challenger beat an incumbent.

	Cong. Dist.		Percent of General Election Vote	Overage
		Illinois (contd.)		
	20	*P. Findley	54.8	2,000
		P. Mack	45.2	---
		Indiana		
W	2	F. J. Fithian	61.1	1,000
		*E. O. Landgrebe	38.9	---
	4	*J. E. Roush	51.9	---
		W. P. Helmke	46.5	---
W	6	D. Evans	52.4	---
		*W. Bray	47.6	7,049
W	8	P. Hays	53.4	315
		*R. H. Zion	46.6	---
W	10	P. R. Sharp	54.4	---
		*D. W. Dennis	45.6	---
W	11	A. Jacobs, Jr.	52.5	---
		*W. H. Hudnut	47.5	2,026
		Iowa		
	1	*E. Mezvinsky	54.4	1,000
		J. A. Leach	45.6	---
W	5	T. Harkin	51.1	500
		*W. J. Scherle	48.9	1,000
W		B. Bedell	54.6	---
		*W. Mayne	45.4	---

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* Incumbent
W - Races in which a challenger beat an incumbent.

	Cong. Dist.		Percent of General Election Vote	Overage
		Kentucky		
	4	*G. Snyder	51.7	---
		K, Hubbard	48.3	168
		Maine		
W	1	D. Emery	50.2	2,325
		*P. Kyros	49.8	---
		Maryland		
	1	*R. E. Bauman	53.0	4,600
		T. Hatem	47.0	---
		Massachusetts		
W	5	P. E. Tsongas	60.6	---
		*P. W. Cronin	39.4	---
		Michigan		
	2	*M. J. Esch	52.3	9,100
		J. S. Reuther	45.4	2,000
	3	*G. Brown	51.2	---
		P. Todd, Jr.	47.6	2,000
	4	*E. Hutchinson	53.1	---
		R. Daugherty	45.5	---
	10	*E. Cederberg	53.7	---
		S. Marble	45.9	---
	11	*P. Ruppe	50.9	---
		F. Brouillette	48.8	9,000

* Incumbent
W - Races in which a challenger beat an incumbent.

	Cong. Dist.		Percent of General Election Vote	Overage
		Michigan (contd.)		
W	18	J. J. Blanchard	58.7	200
		*R. J. Huber	40.2	4,275
		Missouri		
	7	*G. Taylor	52.3	10
		R. L. Franks	47.7	40
		Montana		
W	1	M. S. Baucus	54.8	50
		*R. G. Shoup	45.2	150
		Nebraska		
	1	*C. Thone	53.3	---
		H. Dyas	46.7	---

	Cong. Dist.		Percent of General Election Vote	Overage
		Nevada		
W	1	J. Santini	55.8	6,740
		*D. Towell	36.4	1,930
		New Jersey		
W	1	J. J. Florio	57.5	10,052
		*J. E. Hunt	38.5	1,000
W	2	J. J. Hughes	57.3	3,261
		*C. W. Sandman	41.3	2,500
	6	*E. B. Forsythe	52.5	---
		C. B. Yates	45.5	4,500
W	7	A. Maguire	49.7	9,500
		*W. B. Widnall	44.4	---

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* Incumbent
W - Races in which a challenger beat an incumbent.

	Cong. Dist.		Percent of General Election Vote	Overage
		New Jersey (contd.)		
W	13	H. S. Meyner	57.3	2,332
		*J. J. Maraziti	42.7	430
		New York		
W	2	T. J. Downey	48.8	1,065
		*J. R. Grover, Jr.	44.7	---
W	3	J. A. Ambro, Jr.	51.8	3,300
		*A. D. Roncallo	46.1	---
	4	*N. F. Lent	53.6	---
		F. Ornstein	46.4	400
	5	*J. Wydler	54.2	200
		A. K. Lowenstein	45.8	2,100

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	Cong. Dist.		Percent of General Election Vote	Overage
		North Carolina		
W	29	E. W. Pattison	54.5	---
		*C. J. King	45.5	---
	30	*R. C. McEwen	55.0	---
		R. W. Tobby	45.0	---
		North Carolina		
W	5	S. L. Neal	52.0	24,910
		*Wilmer Mizell	47.6	2,933
W	6	W. G. Hefner	57.0	3,500
		*E. B. Ruth	43.0	---
	10	*J. T. Broyhill	54.4	---
		J. L. Rhyne	45.6	---

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* Incumbent
W - Races in which a challenger beat an incumbent.

[000264]

	Cong. Dist.		Percent of General Election Vote	Overage
		Ohio		
W	1	W. D. Gradison, Jr.	50.9	2,000
		*T. Luken	49.1	---
	2	*D. D. Clancey	53.4	1,500
		E. W. Wocterman	46.6	---
	9	*T. C. Ashley	52.8	---
		C. S. Finkbeiner, Jr.	47.2	600
	12	*S. L. Devine	50.9	---
		F. Ryan	49.1	---
	17	*J. M. Ashbrook	52.7	500
		D. D. Nobue	47.3	---

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	Cong. Dist.		Percent of General Election Vote	Overage
		Oklahoma		
	5	*J. Jarman	51.7	500
		M. H. Edwards	48.3	---
		Oregon		
W	4	J. Weaver	52.9	---
		*J. Dellenback	47.1	---
		Pennsylvania		
	17	*H. T. Schneebeli	52.1	---
		P. C. Wambach	47.9	500
	23	*A. W. Johnson	52.7	500
		Y. Mast	47.3	---
W	25	G. A. Myers	53.8	2,856
		*F. M. Clark	46.2	---

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* Incumbent
W - Races in which a challenger beat an incumbent.

	Cong. Dist.		Percent of General Election Vote	Overage
		South Carolina		
W	6	J. W. Jenrette, Jr.	52.0	3,740
		*E. L. Young	48.0	4,000
		South Dakota		
W	1	L. Pressler	55.3	---
		*F. E. Denholm	44.7	---
		Tennessee		
W	3	M. Lloyd	51.1	2,641
		*L. Baker	45.9	1,056
W	8	H. E. Ford	49.9	6,833
		*D. Kuykendall	49.4	2,750
		Texas		
	5	*A. Steelman	52.1	1,050

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		M. McKool	47.9	670
W	13	J. Hightower	57.6	560
		*R. Price	42.4	3,014
		Virginia		
	7	*J. K. Robinson	52.6	2,000
		G. H. Gilliam	47.1	---
W	8	H. Harris	57.6	500
		*S. E. Parris	42.4	7,750
	9	*W. C. Wampler	50.9	2,500
		C. J. Horne	49.1	27,475

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* Incumbent.
W - Races in which a challenger beat an incumbent.

	Cong. Dist.		Percent of General Election Vote	Overage
		Virginia (contd.)		
W	10	J. L. Fisher	53.6	35
		*J. T. Broyhill	45.2	4,500
		Wisconsin		
W	3	A. J. Baldus	51.1	1,819
		*V. W. Thomson	47.4	600
W	8	R. J. Cornell	54.4	4,000
		*H. V. Froelich	45.6	500
		Wyoming		
	1	*T. Roncalio	54.7	-0-
		T. Stoock	45.3	3,075

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		Oklahoma		
W	6	G. L. English	53.2	2,580
		*J. N. Camp	44.4	-0-

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* Incumbent
W - Races in which a challenger beat an incumbent.

000266

[000267]

10. In the 1974 House campaigns in which a challenger to incumbent received 45 percent or more of the vote, incumbents had $398,097 cash on hand, while challengers had $68,051, as of September 1, 1973.

11. In those 1974 House races in which a challenger to an incumbent received 45 percent or more of the vote, incumbents received $110,798 in amounts in excess of $1,000 per individual contribution not including cash on hand. Challengers received $181,253.

12. In the forty 1974 House races in which a challenger defeated an incumbent, incumbents received $72,723 in amounts in excess of $1,000 per individual contribution not including cash on hand. Challengers received $110,894.

13. In the 1974 House races, incumbents received and repaid loans totaling the amount of $387,930. Challengers to incumbents received and repaid loans totaling the amount of $410,704. Non-incumbents (open races) received and repaid loans totaling the amount of $976,275.

[000268]

14. In the 1974 Senate races, loans received and repaid for all candidates totaled $735,063. The amount of loans received and repaid by incumbents totaled $160,000, by challengers to incumbents $55,689, by non-incumbents in open races $519,374.

15. In the 1974 Senate races, the total amount of cash on hand held by all candidates prior to September 1, 1973, was $1,423,759. Incumbents held $1,402,083 as cash on hand, challengers $21,676.

16. The 10 volumes entitled "1972 Congressional Campaign Finances" published by Common Cause provided to plaintiffs in response to a request for production of documents as hereby adopted and incorporated by reference as Exhibit D.

JAMES L. BUCKLEY, et al.,
Plaintiffs,

v. **Civil Action No. 75-0001**

HON. FRANCIS R. VALEO, et al.,
Defendants.

PART III

COURT FINDINGS OF FACT

May 19, 1975

The findings herein are based upon testimony and affidavits of the following persons and are located in this Part III as indicated.

	Page
James L. Buckley	1
J. Daniel Mahoney	11
David A. Keene	16
Eugene J. McCarthy	17
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Harry M. Fox	66

[001]

JAMES L. BUCKLEY

1. James L. Buckley is a United States citizen and a citizen of the state of New York*. He is registered to vote in New York City and maintains a residence there. He is a federal taxpayer, and he is eligible to vote in elections for the office of President of the United States. Affidavit ¶1.

2. In 1968 James Buckley chose to run for the U.S. Senate to provide the voters a meaningful opportunity to choose between differing philosophical and practical approaches to government. Senator Buckley chose to run knowing he could not win and that he could not raise substantial contributions because he was seen as not "viable" and unlikely to receive a large percentage of the vote. Affidavit ¶¶5, 8.

3. In 1968, Senator Buckley accepted the Conservative Party's Senate nomination. He had never run for public office before, but he was interested in politics and the issues of concern to New York voters that year. He was also convinced that the people of New York would not have a meaningful opportunity to choose between differing philosophical and practical

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* Although not formally qualified as such, by reason of Senator Buckley's experience as a campaigner and as a Member of Congress, the Court has treated him as an expert and permitted his opinion testimony.

approaches to government unless the Conservative Party fielded a candidate. Affidavit ¶5.

4. Senator Buckley was elected to the United States Senate on November 3, 1970 and has served as New York's junior Senator since January, 1971. Although he was enrolled as a Republican at the time, he ran in 1970 as the candidate of the Conservative Party of the State of New York. On his arrival in Washington he asked for and received permission to join the Republican Conference in the Senate. He proposes to run for a second six-year term next year. Affidavit ¶2.

5. Senator Buckley studied the Senate version of the FECA Amendments with an eye toward its possible impact on Senate races in states like New York. Affidavit ¶3.

6. Senator Buckley has stated that substantial contributions are not forthcoming to a campaign unlikely to succeed. It was not lack of funds that caused a low percentage of the vote for James Buckley in his 1968 race for the Senate; rather it was the widespread perception that he was going to receive a low percentage of the vote that caused the lack of funds. Affidavit ¶8.

7. The Republican Party's candidate was Jacob Javits and the Democratic candidate was Paul O'Dwyer. By accepting the Conservative nomination, Senator Buckley was able to present the voters with a clear alternative to the views represented by his opponents. Affidavit ¶6.

8. Senator Buckley knew he could not win in 1968. He nevertheless ran so that the Conservative Party could

register, to a degree, the extent of voter support for its views and thus could influence the major parties. He received more than 14 percent of the vote. Affidavit ¶7; Tr. 10.

9. Senator Buckley knew he could not win in 1968 because he was not a "viable" candidate, because he was unknown and no one felt a candidate of a third party, with its limited resources, could win. Affidavit ¶8.

10. After the 1968 election, Senator Buckley never intended to run for office again. Affidavit ¶10.

11. In 1970 Senator Buckley set three conditions on his entry into the Senate race: (1) that a poll would show that he could conceivably win; (2) that he could raise $100,000 in three weeks' time as a test of whether

he could raise sufficient money to run a credible race; and (3) that he would be taken seriously by the press. Affidavit ¶11; Tr. 8.

12. In 1970 James Buckley received contributions from a "handful of people" in amounts totaling $10,000 to $20,000. That money was used to finance a survey in Spring 1970 which convinced Buckley that he could plausibly enter the race for Senate if he decided he had the financial support to do so. Tr. 6-7; Affidavit ¶12.

13. Senator Buckley faced the need to assure himself of the adequate early financing that he and his advisors felt was essential to launching a successful campaign. Affidavit ¶14.

[004]

14. At this point a friend, Joseph Koopman, offered to lend the Conservative Party $50,000 earmarked for his campaign. He told Senator Buckley and his advisors that while he could afford to lend them the money he could not simply give it to the campaign. Senator Buckley decided to take the loan, knowing that they could use the money both to launch Senator Buckley's candidacy and to generate the funds to repay it. Affidavit ¶15; Tr. 6-7. That money allowed him to hire initial staff, rent a campaign headquarters, and to utilize a direct mail approach to raising more money and support. Affidavit ¶16.

15. Senator Buckley believes, on the basis of his experience, that the challenged legislation, among other things, will force political candidates to depend on large numbers of small contributors for support by depriving them of the ability to solicit the larger contributions that are especially important in launching the campaign of a relatively unknown independent. Affidavit ¶18; Tr. 10-11.

16. On the basis of his political expertise, Senator Buckley is of the opinion that the dynamics of political campaigning and fund-raising are such that the ability to raise significant amounts of "up front" money is often crucial to the initial momentum of a candidate's efforts, and that small contributions do not ordinarily materialize at the beginning of a campaign, but come in only after the candidate and his managers have been able to attract public attention

[005]

to his effort or to finance mailings. This requires money – money that Senator Buckley believes the challenged legislation makes it difficult if not impossible to raise. Affidavit ¶19.

17. Most of the $50,000 Koopman loan went into a direct mail campaign. The direct mail campaign raised $650,000 of the more than $1,800,000 raised that year. Eventually more than 40,000 persons contributed to the campaign. Affidavit ¶20; Tr. 14-16.

18. More than 35 percent of those who gave to Senator Buckley in 1970 contributed less than $20. Weil's list of contributions shows that 180 individuals (including a very few organizations) gave $1,000 or more. Affidavit ¶21; Weil Tr. 10. Both large and small contributions were greater in Senator Buckley's 1970 campaign than in his 1968 campaign. Tr. 10; Leon Weil Deposition Tr. 21-23.

19. Based upon his political expertise, Senator Buckley is of the opinion that this broad base of support was possible only because of Senator Buckley's campaign's initial ability to secure the money it needed to conduct a direct mail campaign. It is further his opinion that ability to gather a significant amount in small contributions depended in considerable measure on his ability

initially to raise a significant amount in small contributions depended in considerable measure on his ability initially to raise a significant amount in loans or contributions in excess of $1,000. Affidavit ¶22.

20. Most advertising agencies in New York require political committees to advance substantial sums of money

[006]

before they will take them on as clients. In 1970, several agencies demanded a $10,000 to $20,000 advance from Senator Buckley's campaign at the outset. Affidavit ¶23. At the time the requests for such advances were made, Senator Buckley does not know how much of the funds on hand had been raised from contributions of $1,000 or less. Senator Buckley ultimately did not retain an agency which required an advance, but used a group of young people who had just formed an agency and did not require any advance. Tr. 22-23.

21. A statewide candidate in New York needs a State campaign headquarters and several local offices. In New York City for instance, there is only a limited supply of suitable locations available at any one time – and these are sought by various candidates. Landlords and utility companies in New York City require advance deposits. In 1970, Senator Buckley's campaign had to contract in early July for space it wanted to use from September 1 through Election Day. Affidavit ¶

22. This space had to be paid for in advance. In fact, the agents for the building in which Senator Buckley's campaign sought and finally rented space would not even talk to campaign officials unless they appeared with a certified check for the amount they desired. This amounted to $18,000. $17,000 rent plus $1,000 as a security deposit. Affidavit ¶25; Tr. 23; Keene Tr. 8-10.

23. In 1970 James Buckley was required to make an initial outlay of $18,000 in deposits to pay for the expenses

[007]

of the installation of a telephone bank used in his campaign. Tr. 24; Affidavit ¶26.

24. Senator Buckley's campaigns in the past have relied heavily on volunteer support. In 1970, there were approximately 15,000 such volunteers. These volunteers, who contributed varying amounts of their time, often defrayed many of their expenses from their own pockets. Affidavit ¶28.

25. In 1970, Senator Buckley was given the loan of an airplane for two weeks. Tr. 28, 29.

26. Senator Buckley ran in 1970 as a third party candidate. Senator Buckley does not know how many persons refused to contribute to his campaign unless they could do so anonymously. He has no knowledge that any persons will refuse to contribute to him in the future because of disclosure. Affidavit ¶30; Tr. 31, 72, 75; Weil Tr. 27-28.

27. Based upon his political expertise, Senator Buckley is of the opinion that a challenger must, under normal circumstances, be able to spend more than the incumbent if he expects to win. Affidavit ¶35.

28. Senator Buckley has a staff of 52 in Washington and New York. This number includes administrative, legislative and press aides. It also includes case-workers, people who spend all their time solving problems for New Yorkers. Affidavit ¶38.

29. Senator Buckley has, in addition to his office in Washington, office space in New York City, Hempstead, Albany, Rochester and Poughkeepsie. He is currently seeking additional space in several other cities. Affidavit ¶34.

[008]

30. Senator Buckley sends out a regular newsletter to more than 200,000 New Yorkers and he is in regular contact with thousands more who are interested in specific issues. Senator Buckley is of the opinion that this is helpful politically. Affidavit ¶40; Tr. 73-74.

31. The Friends of Jim Buckley is a registered political committee under the Federal Elections Campaign Act of 1971 supporting Senator James Buckley and authorized by Senator Buckley to raise funds on his behalf. The Friends of Jim Buckley has filed reports for the period March 5, 1974 through January 31, 1975. In these reports the Friends of Jim Buckley have disclosed the names of 83 individuals who have contributed more than $100. Buckley Exs. 2a-2g.

32. Marvin Liebman is in the political fund-raising business and is a specialist in direct mail solicitation. The Friends of Jim Buckley has retained Marvin Liebman to raise funds on behalf of his campaign at a fee of $1,000 per month while the relationship continues, terminable at any time. In addition to that, the Friends of Jim Buckley is obligated to pay for mailings as they are sent out including the costs of the mailing, the postage, the printing, and paper. Tr. 21.

33. Senator Buckley has not heard that any individual contributing to "Friends of Jim Buckley," has been subject to harassment or reprisals. Senator Buckley has heard of no instances where anyone has refused to contribute to the "Friends of Jim Buckley" because of the 1974 FECA. Tr. 32-33.

[009]

34. Prior name recognition is an important factor that influences the success of a candidate. Tr. 45; McCarthy Tr. 74.

35. James Buckley desires to be a member of the majority of the Senate. Tr. 59.

36. Senator Buckley believes that his capacity to affect legislation on a broad scale depends on whether or not 20 to 30 present incumbents can be defeated. Tr. 59.

37. Senator Buckley cannot remember contributing more than $1,000 to the campaign of any candidate for federal elective office. Tr. 65.

38. Of those volunteers who incurred expenses on his behalf, Senator Buckley does not know how much they contributed to his campaigns or spent independently of his campaigns. Tr. 28.

39. Senator Buckley cannot remember contributing as much as $2,000 to candidates for federal elective office in any one calendar year. Tr. 90.

40. In his 1970 race for the U.S. Senate, Senator Buckley and his immediate family spent under $20,000 on his campaign. Senator Buckley and his immediate family spent less than $20,000 on his 1968 campaign. Tr. 65-66.

41. The following table shows minimum number of contributors giving various size contributions to Senator James Buckley's 1970 Senate campaign:

[010]

SIZE OF CONTRIBUTION	NUMBER OF PERSONS
$100	998
$101 to $499	502
$500 to $999	151
$1,000 and over	180

Weil Tr. 21-22. These may not be complete. Weil Tr. 23, 29.

42. Senator Buckley's 1970 campaign received approximately $150,000 in loans. $50,000 of that amount was received from Mr. Koopman at the beginning of the campaign, and the remainder ($100,000) was received from three individuals at the end of the campaign. Weil Tr. 14-15.

43. The true value of incumbency is difficult to quantify. Tr. 49.

44. Buckley has stated that wealthy candidates prior to the FECA Amendments of 1974 had an advantage over those with less funds available. Buckley Exh. 3 at S4806, Buckley Tr. 53.

[011]

J. DANIEL MAHONEY

1. J. Daniel Mahoney is the State Chairman of the Conservative Party of the State of New York and has served continuously in that office since November, 1962, when the Conservative Party of the State of New York became an established political party under the election laws of New York Affidavit ¶2.

2. The Conservative Party of the State of New York has nominated in the past and intends to nominate in 1976 candidates for the offices of President of the United States, United States Senator from the State of New York, and Members of the United States House of Representatives from all or nearly all of the Congressional Districts of the State of New York. The Party will seek to place its candidate for President only on the ballot in New York. Affidavit ¶3.

3. The Conservative Party of the State of New York has in the past solicited and received individual contributions in excess of $1,000 towards the election of its

candidates. It desires to do so in 1976. Affidavit ¶4; Tr. 41-42.

4. The Conservative Party of the State of New York registers and reports with the Comptroller General of the United States as a political committee; in these reports names of contributors giving in excess of $100 have been disclosed. Mahoney Tr. 14-15, 20. The "1974 Fund to Defeat Jacob Javits" (an affiliated organization of the Conservative Party of the State of New York) registers and reports as a political committee under the FECA. The "1974 Fund to Defeat Jacob Javits" has disclosed the names of individuals who contributed to that committee. Most of the contributors whose names were disclosed contributed less than $100. Mahoney Ex. 10.

[012]

5. The Conservative Party believes it is essential for the Party to solicit individual contributions in excess of $1,000 early in campaigns in order to obtain the necessary "seed money" to finance direct-mail fund-raising appeals to small contributors, to open and operate campaign headquarters, to make initial funding commitments to advertising agencies, and to buy media time before it is preempted by political opponents. Affidavit ¶5; Tr. 31.

6. As the Conservative Party candidate, Barbara Keating's 1974 New York senate-seat campaign raised approximately $190,000 primarily in small contributions. In her campaign, the party used direct-mail fund-raising as provided by the Viguerie Organization. This organization did not demand payment in advance, but collected their fee as so many cents per letter sent. The organization, as a matter of standard routine, finances a mailing and there is no need for a campaign which hires the Viguerie group to put money up front. The Conservative Party used the Viguerie Organization in 1973 and 1974, but

did not renew the contract for 1976. Tr. 23, 25-26.

7. The Conservative Party intends (i) to contribute amounts in excess of $5,000 to as many of its candidates for federal office as it is able, (ii) to expend on behalf of its candidate for President of the United States an amount in excess of $5,000, (iii) to expend, if possible, an amount in excess of two cents multiplied by the voting age population of the State of New York in the case of its candidate for United

[013]

States Senator, and (iv) to expend an amount in excess of $10,000 in the case of many candidates for the House of Representatives. Affidavit ¶6.

8. In 1962, the Conservative Party circulated petitions to establish the party as a legal entity in the State. During that effort, there was a campaign of harassment against people signing that petition during which individuals in various departments of the state government participated by talking to people in regulated businesses who had signed the petition. Two major newspapers in the state ran editorials deploring this practice and, as a result of these articles, the campaign of harassment against the Conservative Party was dropped. Tr. 11-12.

9. Mahoney knows of no instance in which any of the individuals whose names were disclosed to the federal government under the Federal Election Campaign Act of 1971 have been subject to harassment or reprisals as a result of this disclosure. Tr. 21.

10. The Conservative Party in its past campaigns in support of candidates has received the bulk of its funds from persons contributing less than $1,000 to any candidate. Affidavit ¶4; Tr. 22-28, 30.

11. The Conservative Party does not make expenditures on behalf of candidates. It channels all its campaign activities, including expenditures, through various political committees. Tr. 35. As a result, there has been no instance where the Conservative Party of the State of New York has itself directly expended in excess of $10,000 in the case of a candidate for the House of Representatives. Tr. 35.

[014]

12. No candidate of the Conservative Party for the United States Senate has expended personal funds in excess of $35,000 on behalf of his own campaign. Tr. 36.

13. Mahoney cannot identify any candidate for the House of Representatives of the Conservative Party of the State of New York since 1962 who has expended as much as $25,000 in personal funds on behalf of his own campaign. Tr. 36-37.

14. Mahoney does not know how much was received in contributions of $1,000 or less for the "1974 Fund to Defeat Jacob Javits," or how many contributions were received in excess of $1,000 for the Keating 1974 senate campaign or the Buckley 1968 senate campaign. Tr. 22, 26.

15. The Conservative Party has never nominated a presidential candidate who was not also the presidential candidate of another political party. Tr. 39.

16. The Conservative Party had a problem getting its 1974 senatorial candidate, Barbara Keating, equal television coverage with the candidates Clark and Javits. After protesting vigorously they were eventually successful at getting the media to include her in certain debates. Tr. 44-45.

17. The Conservative Party spent approximately $190,000 on Barbara Keating's race for the Senate in 1974. Mahoney regards that campaign as a success, in that Ms. Keating's campaign (1) obtained a certain minimal level of financing to allow articulation of the party's position, (2) caused the media to take the candidate seriously and regard the election as a three-way race, and (3) allowed the Party to have an impact on whoever was elected to the Senate. Mr.

[015]

Mahoney feels she could have raised less than $190,000 and still have run a successful race in such terms. Tr. 59-63.

[016]

DAVID A. KEENE

1. David A. Keene is Executive Assistant to Senator James Buckley of New York. In 1964 he was campaign manager for a Congressional candidate in Wisconsin. He has been an official of three political organizations which raised money. In all these capacities, he has been involved in raising money through the mails. Tr. 3, 15-17.

2. Senator Buckley, according to Keene, uses the frank to mail newsletters periodically to a list of about 280,000 persons in the State of New York. That list, which is kept on the Senate computer, catalogues by issue the individuals who wrote Senator Buckley. There are approximately thirty such issue categories. Tr. 19-21.

[017]

EUGENE J. McCARTHY

1. On January 12, 1975 Eugene McCarthy* declared his Independent candidacy for President of the United

States. He is not seeking the nomination of either of the two major parties, and his candidacy has no tie to any political party. Tr. 8-9, 66; Affidavit ¶ 1.

2. Eugene McCarthy and the Committee for a Constitutional Presidency, which is supporting him, are seeking to place his candidacy on the ballot in all 50 states and the District of Columbia in the 1976 election. His candidacy involves no primary elections, caucuses or conventions. Tr. 9-10; Affidavit ¶ 1. The Committee for a Constitutional Presidency – McCarthy '76 has no present intention to hold a nominating convention. Tr. 86.

3. In 1967-68 Senator McCarthy challenged an incumbent President of the United States for the presidential nomination of the Democratic party. Senator McCarthy was then an incumbent Senator. The major issue in that contest was the war in Vietnam, which the incumbent President supported and Senator McCarthy opposed.

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* Although not formally qualified as such, by reason of Senator McCarthy's experience as a campaigner and as a former Member of Congress, the Court has treated him as an expert and permitted his opinion testimony.

[018]

Upon the basis of his political expertise, Senator McCarthy expressed the opinion that an incumbent President has significant advantages over a challenger in that the incumbent exercises control over his party's national committee; the incumbent can call upon the Vice President and members of his cabinet to campaign for him; the incumbent has easier access to radio and television time; and is able to use government programs

and power to advance the incumbent campaign. Affidavit ¶4.

4. A large part of the contributions raised for Senator McCarthy's 1968 campaign came from persons who were willing to contribute large sums of money. Several contributed more than $100,000 each in the course of the campaign. Several others contributed more than $50,000 each. The total contributions to Senator McCarthy's campaign approximated $11 million. Senator McCarthy is unable to state either how much or what percentage of that sum was in contributions in excess of $1,000. However, at least 24 persons contributed amounts over $1,000 through the time of the New Hampshire primary. The specific contributions ranged from $1,069 to $15,000. The total received from the 24 large contributors was $95,869. Affidavit ¶6; Tr. 5-6, 33.

5. Eugene McCarthy's decision to enter the New Hampshire primary was made after January 1, 1968. The New Hampshire primary was held in the middle of March, 1968. Tr. 32.

[019]

6. Small contributions did come in to Senator McCarthy's campaign in large amounts after the New Hampshire primary. Advertisements run in the New York Times produced an extensive response. But without the large contributions received during that primary campaign, Senator McCarthy believes it is doubtful that he could have run well in New Hampshire. Affidavit ¶8; Tr. 36-37.

7. President Johnson withdrew from the presidential contest on March 31, 1968. Subsequently Vice President Humphrey entered the race. Affidavit ¶8; Tr. 39.

8. In competing with Vice President Humphrey, McCarthy relied on a combination of large and small donors. Senator McCarthy believes that had the current limits on contributions been in effect at that time, it would have been far more difficult for him to compete with the Vice President. The Vice President won the Democratic Party's nomination. Affidavit ¶10.

9. Senator McCarthy does not know how much of the $11 million raised for his '68 primary was from contributions in excess of $1,000. Tr. 37. Senator McCarthy does not know how much was raised after New Hampshire in contributions in excess of $1,000, but believes that contributions (one of $100,000 and one of $500,000), came after New Hampshire. Tr. 39-40.

Senator McCarthy does not know if he solicited or received contributions in excess of $5,000 from any organized group in other races. Tr. 91.

[020]

10. Senator McCarthy does not know if some New Hampshire money might not have been used later in the campaign. Senator McCarthy does not know if after New Hampshire there were any funds left. Tr. 34-35.

11. Senator McCarthy's campaign was also aided by many volunteer workers, many of them young. Most of the young volunteers were unable to offer direct financial support but they gave freely of their time and effort, meeting most of their expenses out of their own pockets. Many stayed with the campaign for long periods, going from state primary to state primary. These two groups of citizens – a small number of large financial contributors and a large number of hard-working volunteers – complemented each other. Affidavit ¶12; Tr. 103.

12. President Ford has announced his intention to seek election in 1976. Senator McCarthy does not hold federal or state office, either elective or appointive.

13. Many high-ranking Executive Branch officials can be used as campaigners for the President, even as they nominally act in non-partisan ways. In 1972, former President Nixon used such officials as "surrogates" for the President. Many men and women in the armed forces of the United States are called upon to perform personal services for the President. For example, members of the military fly the President's planes, staff his yacht, attend to his medical needs, and chauffeur his White House staff members. Affidavit ¶ 14.

[021]

14. Senator McCarthy and the defendants agree that it is difficult in any case to raise enough money to compete against an incumbent President. Affidavit ¶ 16.

15. Political parties use national nominating conventions for numerous publicity purposes quite apart from nominating Presidential candidates. Their underlying concern with favorable publicity explains the prime-TV time convention sessions and the seemingly endless parade of speakers being "shown" to the public. The height of publicity-seeking is, of course, when an incumbent President is to be renominated. In 1964 President Johnson, and in 1972 President Nixon, successfully used the conventions in their reelection efforts. The Committee for Constitutional Presidency does not intend to hold a national nominating convention in 1976. Affidavit ¶ 21; Tr. 12, 86.

16. Each major-party nominee in the general election campaign will be freed from the need to spend time and effort in fundraising. Senator McCarthy believes as an

independent candidate that he will not enjoy that advantage. Affidavit ¶ 22.

17. Of the six members of the Federal Election Commission, two are former Democratic congressmen, two are former Republican congressmen, and one is a former president of the Pennsylvania Council of Republican Women. Affidavit ¶ 23.

18. Approximately 350,000 to 500,000 signatures are necessary to obtain ballot status in California for Eugene J. McCarthy's presidential candidacy. Tr. 20-21.

[022]

19. Eugene McCarthy anticipates a great deal of informal and unstructured political activity by volunteers supporting his candidacy for the Presidency in 1976. Tr. 102, 104-105.

20. Senator McCarthy has entered the 1976 presidential race in spite of only a modest financial backing, and has continued to remain a candidate even though extensive efforts to raise funds before the 1974 Amendments to the Federal Election Campaign Act came into effect have had limited success. Tr. 49-61.

21. Senator McCarthy believes that neither he nor other candidates are likely to get large contributors for campaigns in 1976 of the magnitude that he got in his 1968 bid for the presidency because of the appeal of the issue in 1968 – the continuation of the war in Vietnam. Tr. 100.

22. Senator McCarthy would like to spend more than $24 million for his 1976 campaign and is "hopeful" of raising that amount. Tr. 19, 22.

23. For his 1976 campaign, Eugene McCarthy has raised $59,000 to date. Of this, five or six contributions

in excess of $1,000 were received. Tr. 49-50.

24. Senator McCarthy or his campaign staff has had conversations with several direct-mail fund-raising firms, but has not so far decided to use them to raise money for his 1976 campaign. Tr. 61-64.

25. Eugene McCarthy does not have access to any institutional support, and thus does not know that he will receive donations from groups that would qualify for the $5,000 maximum contribution allowed political committees. Tr. 6-7.

26. Senator McCarthy is unable to state whether the $25,000 aggregate contribution limit from individuals might harm his campaign. Tr. 6.

27. Senator McCarthy does not know how much money was raised for the 1972 Presidential nominating conventions of the two major parties. Tr. 12.

28. Eugene McCarthy cannot afford to put $50,000 of his own money in his campaign for the presidential election in 1976. Tr. 7.

29. An independent candidate faces difficulty in raising campaign contributions due to the loyalty to the two-party system in America. Tr. 8, 72.

30. Senator McCarthy says that on philosophical grounds he would not accept public financing for his campaign for presidency even if after the election he qualifies for it. Tr. 89-90.

31. Prior to January 1, 1975, the effective date of the FECA, the Committee for a Constitutional Presidency received a number of contributions in excess of $1,000 from individuals and $2,000 from couples. Senator McCarthy believes his 1976 campaign is being harmed

by the contribution limitations of the 1974 Act. Tr. 6, 50-53.

[024]

MARY MONROE

1. Mary Monroe is the Treasurer of the Committee for a Constitutional Presidency – McCarthy '76 (hereinafter "The Committee.")

2. The Committee for a Constitutional Presidency was established in July, 1974. At a Chicago conference in August of 1974, the Committee announced its intention to field an Independent ticket for President and Vice President of the United States in the 1976 election. In January, 1975 the Committee asked Eugene J. McCarthy to be its presidential candidate. He accepted; the Committee then became his principal campaign committee and added "McCarthy '76" to its name. The Committee's vice presidential candidate will be selected by the spring of 1976. Affidavit ¶2.

3. The Committee for a Constitutional Presidency – McCarthy '76 is a registered political committee under the FECA, and has filed reports of receipts and expenditures for the period from July 1974 to the present.

4. The Committee has been informed by officials of Idaho, Kansas, Michigan, Nebraska, and Utah that their states do not permit Independent candidates for President to appear on the ballot in the general election or that there are no provisions in their laws for placing Independent candidates for President on the ballot. The Committee expects to challenge such laws on constitutional grounds. The Committee may also challenge the ballot placement laws of several other states. The time and expense that such legal challenges involve are problems

unique to candidates running outside the Democratic and Republican parties. Affidavit ¶4.

[025]

5. The Committee for a Constitutional Presidency – McCarthy '76 raised $38,559 prior to January 1, 1975. Tr. 14.

6. The Committee attempted to raise contributions in excess of $1,000 before the effective date of the FECA amendments of 1974. While there was no target total amount the Committee was seeking to raise by the first of January, 1975, it hoped to raise substantially more than it did. Tr. 16-17.

7. The Committee for a Constitutional Presidency – McCarthy '76 received contributions from five individuals in excess of $1,000 prior to January 1, 1975. Monroe Ex. 4.

8. The Committee for a Constitutional Presidency – McCarthy '76 has disclosed the names of fifteen individuals who contributed over $100 to the Committee for a Constitutional Presidency. Monroe Exs. 2-6.

9. William Clay Ford contributed $21,000 in 1974 to the Committee for a Constitutional Presidency. Ford also made and cancelled a loan of $9,000 to the Committee in 1974. Tr. 15-16.

10. At present, the Committee relies heavily upon a volunteer Certified Public Accountant to ensure that its financial reports to the government are complete and accurate.

11. Ms. Monroe knows of no donors to the Committee whose names have been disclosed to the supervisory officers who have been subject to harassment. Tr. 41.

[026]

STEWART R. MOTT

1. Stewart R. Mott is a citizen of the State of New York and of the United States, and he is eligible to vote in elections for the office of President of the United States. He is a registered voter in the State of New York, and a federal taxpayer. Affidavit ¶1.

2. In October 1963, Mott helped form the Flint Planned Parenthood Association, became its President in June 1964, was principal organizer, administrator, fund-raiser, publicist, promoter, community-relations specialist and clinic director. He provided the major share of funds and spent well in excess of $1,000 of non-reimbursed personal monies during the first year in helping to create the right political and community-leadership climate to accept the then-controversial first birth control clinic in Flint, Michigan. Affidavit ¶2.

3. During the following eight years, Mott gave more than $1,000,000 in support of Planned Parenthood programs, a large part of which was donated in support of candidates for federal office who endorsed expanded family planning services. Affidavit ¶3.

4. During the years 1965-1967, Mott was periodically involved with the Vietnam protest "movement" and spent at least $1,000 annually on behalf of efforts to affect public policy and to elect federal candidates who would vote to extricate the U.S. from Vietnam. Affidavit ¶5.

5. In February 1968, Mott made a donation of $1,000 to a Presidential candidate, namely Eugene McCarthy. Affidavit ¶8.

[027]

6. On March 1, 1968, Mott contracted with the New York Times and eight Michigan newspapers to run two-page advertisements, signed by him, to encourage Nelson Rockefeller to present himself as a Republican alternative to Richard Nixon. These advertisements which cost him an immediate out-of-pocket $25,000 brought $144,000 in pledges of public support of Mott's position, which donations were pledged to encourage a Rockefeller candidacy. Affidavit ¶9.

7. During the months of March, April, and May 1968, Mott managed and financed an authorized Rockefeller presidential committee. During that period, he spent $100,000 of his own money, plus aboot $40,000 of public donations to encourage Rockefeller's candidacy. Affidavit ¶9.

8. In June 1968, Mott joined on as Chairman for Special Gifts in the McCarthy campaign. During the following three months, he gave directly $200,000 to the McCarthy effort, spent personally on a non-reimbursed basis several thousand dollars for travel, telephone, personnel, etc., and assisted in raising several million dollars for the McCarthy effort. As Chairman for Special Gifts, he sought out donors of $5,000-and-over, and had frequent continuing contact with those who gave $25,000 and more. Affidavit ¶12. Mott worked full time as a volunteer for three months in Eugene McCarthy's campaign. Tr. 47.

[028]

9. In the November elections of 1968, Mott assisted financially a variety of Congressional candidates who favored Vietnam withdrawal. Not long after November 1968, he became a member of the National Committee

for an Effective Congress and has worked ever since with NCEC and other candidate-support groups to help build a U.S. Congress which would provide appropriate oversight on what he considers American military adventurism abroad.

10. In 1970, Mott helped to organize an effort known as "Peace, Inc." which put on fund-raising entertainment on behalf of Congressional candidates. In that year, aside from regular salaries and office expense, he donated over $30,000 to various Congressional candidates and expended about $15,000 on behalf of "Peace, Inc." Virtually all of his political gifts and expenses in 1970 were directed toward candidates who supported U.S. withdrawal from Indochina. Affidavit ¶16.

11. Late in 1970, Mott met with George McGovern and a group of other political leaders and major donors. In January 1971, he donated $5,000 to the McGovern campaign for the Democratic Presidential nomination, as did several others. Affidavit ¶18.

12. One reason that McGovern turned to Mott for assistance was because about a year earlier he had sought to put on special nationwide network television program about Vietnam. On a Friday before the Monday broadcast date, he asked Stewart R. Mott to lend $35,000 to pay for the network time in order to get the program on. Affidavit ¶19.

[029]

13. In 1971, Mott attempted to bring together the so-called liberal-progressive Democratic campaigns in an effective, collaborative manner so that candidates McGovern and McCarthy and Lindsay and Chisolm would not collide in the early 1972 primaries to their mutual detriment. He hosted meetings of their campaign mana-

gers, advised them on the delegate selection process and sought to avoid conflict among them on issues of common concern. During the last several months of 1971 he expended more than $1,000 on these activities, not on behalf of any one candidate, but with concern about the success of all four. Affidavit ¶ 20.

14. During February and March of 1972, Mott undertook to find out where Edmund Muskie's campaign money came from. The project, which cost him some $40,000 was not authorized by the Muskie campaign. In order to acquaint the public and the press with his findings, Stewart R. Mott placed advertisements in dozens of newspapers in various parts of the country, asking Muskie to make full disclosure of his campaign finances and asking him the question: "Where does your money come from?" Affidavit ¶ 21.

15. During 1972, Mott became actively engaged in the McGovern campaign, loaned monies approximately $50,000 for direct mail start-up purposes, gave about $350,000 to various McGovern committees, and expended some $50,000 for personal expenses. Affidavit ¶ 25.

[030]

16. In 1972, Mott spent, gave, and/or loaned over $50,000 to publicize Nixon's words: "Those who have had a chance for four years, and could not produce peace, should not be given another chance." His efforts to publicize that statement were undertaken outside the auspices of the McGovern campaign. Affidavit ¶ 26.

17. In September and October 1972, using a political committee named "Vote for Peace," Mott arranged a network television half-hour prime time in order to give Congressional candidates a chance to speak. He loaned the Committee over $90,000 in order to

purchase the TV time. Affidavit ¶ 27. In 1972 he contributed $73,469 to 51 candidates for federal office through the "Vote for Peace" program. Of this amount, $32,566 was contributed to 28 incumbent candidates and $24,617 was contributed to challengers. The balance was contributed to candidates who ran in races in which no incumbent competed. Additionally, Mr. Mott made six contributions directly to candidates to the House and Senate for a total of $15,415. Four of the six were to incumbents for a total of $11,915. The two challengers received $3,500 total.

18. In 1974, Mott's total direct and indirect expenditures on behalf of Congressional candidates was about $80,000. This figure includes contributions to twenty candidates for the Senate, in amounts ranging from $100 to $3,000, and totalling approximately $21,000. It also includes contributions to 91 candidates for the House, in amounts ranging from $100 to $3,000, and totalling approximately $49,000. Additionally, he estimates his personal expenses in connection with the 1974 campaign to be $10,000. Affidavit ¶ 29.

[031]

In 1974 Mott contributed financially to 13 incumbent members of the House of Representatives and 7 incumbent members of the Senate. He contributed to five Senatorial candidates challenging incumbents and 28 House candidates challenging incumbents. He also contributed to 8 candidates for the Senate where there was no incumbent in the race and 17 candidates for the House of Representatives where there was no incumbent in the race. He also contributed to 32 candidates for the House who were either challengers or who were running in races where there was no incumbent. Tr. 8-9.

In 1974 Mott contributed $7,200 to incumbent candidates seeking reelection to the Senate; he contributed $4,700 to challengers against incumbent Senators; and $8,850 to candidates for the Senate where there were no incumbents. In 1974 he contributed $5,000 to incumbent members of the House seeking reelection, $14,950 to challengers to incumbents in the House; $18,235 to candidates running in races where there were no incumbents; and $10,500 to candidates who were either challengers or who were running in races where there were no incumbents. Tr. 10.

In 1974 Mott made 16 contributions in excess of $1,000 and 94 of $1,000 or less to House and Senate candidates. The 94 contributions of $1,000 or less plus the first $1,000 of the 16 contributions in excess of $1,000 totalled $53,485. The total of the amount in excess of $1,000 of the 16 contributions is $16,360.

[032]

19. Mott contributed $1,000 to the candidacy of Nicholas Johnson in the Iowa Third Congressional District in 1974. Tr. 25-26.

20. Mott has given substantial sums of money to political candidates and their supporting committees, made expenditures in campaigns independent of any candidate or party, and given money to numerous organizations that conduct "issue" campaigns or which work for social goals that he supports. As for the last of these three categories he has given $63,953 to the National Committee for an Effective Congress during the period 1968-74, $6,000 to the Center for Public Financing of Elections in 1973-74, and $1,000 to Common Cause in 1973. Affidavit ¶31.

21. Mott's approximate net worth is $3 million. Tr. 51.

[033]

WILLIAM A. STEIGER

1. William A. Steiger* is a Member of the United States House of Representatives from the Sixth Congressional District of Wisconsin. He is a citizen and registered voter in the State of Wisconsin and is eligible to vote in elections for federal offices. He has represented the Sixth District since 1967. He is considering a candidacy for federal office in 1976. It is possible that he will be a candidate for the United States Senate in 1976. Congressman Steiger based upon his experience and expertise in the field of politics believes that the Federal Election Campaign Act Amendments of 1974 will enhance his chances of reelection to the House of Representatives, and – by the same token – will severely hinder his ability, and the ability of other eligible citizens, to challenge the likely candidacy of one of his state's incumbent United States Senators whose term expires in 1976. Affidavit ¶¶1, 33; Tr. 9. He is further of the opinion that the limitations on expenditures are too low; and that they serve mainly to preserve the political status quo, by benefiting incumbent federal office-holders because challengers' chances will be less under the challenged statutes than otherwise; affidavit ¶2; Tr. 18,

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* Although not formally qualified as such, by reason of Congressman Steiger's experience as a campaigner and as a Member of Congress, the Court had treated him as an expert and permitted his opinion testimony.

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that campaigning for federal elective office necessarily costs money; that it is false to assume that the prices which candidates must pay in order to communicate their ideas and positions are pegged to the number of voters;

and that these limits ignore the variances that exist in media coverage and costs capabilities across the nation. Affidavit ¶ 5. In support of his opinion he relies upon a comparison of the advertising costs and voter coverage of two major daily newspapers, The Milwaukee Journal and The Washington Post. A full-page advertisement in a Sunday edition of The Milwaukee Journal will cost a Senate candidate $2,424. The Sunday edition has a Wisconsin circulation of 545,000. A full-page advertisement in a Sunday edition of The Washington Post will cost a candidate $7,713. In the area of its heaviest circulation, the State of Maryland, The Post's Sunday edition has a circulation of 297,197.

2. Congressman Steiger is of the opinion that allowing a higher limit for the general election ignores the fact that the major election battle frequently takes place in the primary. Affidavit ¶ 9.

3. A candidate running statewide in Wisconsin confronts an electorate of 2,965,000, according to the Bureau of the Census. The State is large geographically, and travel costs are high. The State also has a large number of newspapers, radio stations and television outlets. A 1973 report of the Governor's Study Committee on Campaign Finance listed more than 40 daily newspapers, more than 300 weekly newspapers,

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19 commercial television stations, and more than 130 commercial radio stations. Affidavit ¶ 10.

4. There is no television station in the Sixth District of Wisconsin. A candidate seeking television exposure will go to Green Bay or Milwaukee. In the Third District of Wisconsin there are television stations in Eau Claire and La Crosse, which are cities in the District.

Tr. 7. In comparing the costs of campaigning among Congressional districts, the factors to consider are how a candidate, in a particular kind of district, tries to reach the constituency, what the resources are that are available for campaigning, and the different costs involved. Congressman Steiger, however, has not analyzed or surveyed the costs, over time, of campaigns for federal office in various congressional districts. Congressman Steiger believes that historical analysis does not meet the issues. Tr. 7-10.

5. Gaylord Nelson spent $470,000 to win reelection as United States Senator from Wisconsin in 1968. William Proxmire spent $372,934 to win reelection as United States Senator from Wisconsin in 1970. Affidavit ¶ 12; Tr. 12.

6. Congressman Steiger believes that, if winning candidates use contributions received in excess of their expenditure limitations to defray their expenses of holding federal office, the power of incumbency will be strengthened further. Affidavit ¶ 15.

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7. Incumbents, including Congressman Steiger, have available to them rent-free offices (one in Washington and three at home), which are unavailable to non-incumbents, plus their personal and committee staffs. Affidavit ¶ 17. Most members of Congress will, from time to time, have their staffs involved in their campaigns for reelection. A staff member on the payroll of the House of Representatives has written a political speech for William A. Steiger. It is a common practice, according to Congressman Steiger, for staff members on the payroll of the House of Representatives to write political speeches for the Congressman whom they serve. Tr. 31-33.

8. Congressman Steiger does not believe that incumbency per se makes it easier for a candidate to raise campaign funds, but that there are a number of other factors. Tr. 85.

9. Congressman Steiger has personal knowledge as to the use made of the franking privilege by Members of the Senate and of the United States House of Representatives. Tr. 36-37. Incumbents do make use of the frank. It is available as a way of communicating with constituents. The frank has a variety of specific purposes: to announce office hours, to send out press releases, to seek opinions, to educate about issues of the day, and to inform. Affidavit ¶ 19.

10. Congressman Steiger sends a postal patron newsletter to 160,000 postal patrons. Tr. 44-45.

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11. Incumbents make use of the House and Senate Recording Studios. Incumbents enjoy lower recording rates, and their words tend to be counted as news. Affidavit ¶ 19.

12. Once every week, for instance, Congressman Steiger makes a five-minute radio tape. It is duplicated by the Recording Studio and is mailed by his office to 24 radio stations serving his District. These reports have been broadcast every week for more than eight years, at a cost to him of less than $40 a month. Affidavit ¶ 20.

13. During his first year in Congress, Congressman Steiger made a monthly TV report, which was mailed to six Milwaukee and Green Bay stations just outside the Sixth District. In 1967, the cost each month of producing these six TV clips was $30. Affidavit ¶ 22. In 1967, Congressman Steiger's office – during the first nine

months – mailed out 110 press releases and 36 weekly newspaper reports. These mailings do not include the announcements of Federal grants and public projects that went to selected newspapers, or the photographs of Wisconsin visitors standing on the Capitol steps that were sent to their weekly newspapers. All of this newspaper activity cost nothing more than the paper and mimeograph ink that are available at cost through the House Stationery Room. These actions were taken, according to Congressman Steiger, in the hope of enhancing his chances for reelection. Affidavit ¶ 23; Tr. 44-46.

[038]

14. Congressman Steiger sends a weekly newspaper report to all the newspapers, radio stations, and television stations that cover his Congressional district, and organizations and individuals who have requested it. Tr. 44.

15. At the end of his first nine months in office, a professional survey showed Congressman Steiger's identification with the voters was far more secure. The support spread between Steiger and Race, the previous incumbent, had grown from a narrow four percent to a more comfortable 35 percent. Affidavit ¶ 24.

16. In August 1968, near the end of Congressman Steiger's first term, Market Opinion Research reported that exactly 70 percent of Wisconsin's Sixth District voters correctly answered the question, "Can you give me the name of your Congressman?" Affidavit ¶ 25.

17. Although Congressman Steiger's district boundaries were changed substantially by reapportionment in 1972, the incumbent identity factor has changed very little. District-wide, in 1974, 61 percent could answer the question, "Who is your Congressman?" In the populous

eastern counties of the District – those which had been part of the Sixth District before reapportionment – fully 75 percent were able to answer correctly. Affidavit ¶ 26.

18. Congressman Steiger spent $63,858.72 in his 1966 campaign for the United States House of Representatives. Tr. 48.

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19. Carl Steiger, Congressman Steiger's father, contributed $4,000 to his son's campaign in 1966.

20. The Wisconsin Republican Party contributed $4,000 to Congressman Steiger's campaign in 1966. Tr. 49, 85.

21. The nature of a Congressional district as a swing district (one in which the last election produced a vote for the winner that was 55 percent or below) can have an impact on the ease with which money can be raised by a candidate for office. Congressman Steiger's district, the Sixth District of Wisconsin, was perceived in 1966 as a swing district. Tr. 85-87. In non-swing district races challengers will, on balance, find it more difficult to raise funds than incumbents. Tr. 82, 89.

22. In "non-swing" races, it is Congressman Steiger's belief, that generally, challengers have more difficulty raising campaign funds than do incumbents, but that it is not substantially more difficult. Tr. 89.

23. Congressman Steiger did not spend a considerable amount of time in 1966 attempting to raise funds for his campaign, and spends less time as an incumbent attempting to raise campaign funds. Tr. 85, 103.

24. Public opinion polls influence a candidate's approach to a campaign. Tr. 82.

[040]

25. In each of his campaigns for the House of Representatives in 1966, 1968, 1970, 1972 and 1974, Congressman Steiger expended less than $64,000. Tr. 48, 67, 96-97. Congressman Steiger does not know what his incumbent opponent raised and expended in 1966, or what any of his opponents expended in campaigns in the period 1968-1974. Tr. 73, 97.

26. Based upon his own experience, Congressman Steiger believes it is a general proposition that incumbents principally devote their attention to resource allocation, while challengers expend much effort acquiring the resources. Tr. 85, 87. Fundraising is affected by a number of factors. Tr. 89-90.

[041]

IRA GLASSER

1. Ira Glasser is the Executive Director of the New York Civil Liberties Union (hereinafter NYCLU), an affiliate of the American Civil Liberties Union (hereinafter ACLU), which is organized as a not-for-profit corporation under the laws of New York. He has served on the staff of NYCLU since 1967, and has served as Executive Director since 1970. He is a registered voter in the State of New York. Affidavit ¶1.

2. The NYCLU is a non-partisan organization, dedicated to defending the rights guaranteed to persons under the Constitution of the United States and having as a principal function the dissemination of information concerning such rights within the State of New York. Affidavit ¶ 2.

3. As the New York State affiliate of the ACLU, the NYCLU is barred by the ACLU Constitution and policies from endorsing or opposing any candidate for

public office. NYCLU is, however, allowed to criticize public officials whose conduct violates civil liberties and to publicize the civil liberties record of any government official. Affidavit ¶ 2.

No advertisement, petition, or public statement of the NYCLU has ever advocated the election or defeat of a political candidate. Glasser Tr. 8.

4. Although NYCLU does not endorse or oppose the election of candidates, its advertisements, statements of views on public issues, and other similar activities frequently and necessarily refer to, praise, criticize, set forth, describe

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or rate the conduct or actions of clearly identified public officials who may also happen to be candidates for federal office. The fact that a public official identified in NYCLU public information activities is also at the time a candidate for public office is not directly related to the intent or purpose of the advertisement. Tr. 75-76.

5. NYCLU regularly publicizes in its membership newsletter and through pamphlets and other publications, the civil liberties voting records, positions and actions of elected public officials, some of whom are candidates for federal office. Affidavit ¶ 12; Deposition 12, 91, 92, 111-12, 115-16.

6. The newsletters are published approximately six times a year, at a cost of in excess of $1,000 per issue. Affidavit ¶ 12; Deposition 93.

7. The expenses of producing the newsletters are normally paid for out of NYCLU general funds, supplied by membership dues and contributions. Affidavit ¶ 12.

8. Each year NYCLU publishes and widely disseminates one issue of its newsletter devoted to an analysis and review of the preceding session of the New York legislature. Certain of the state legislators whose public actions are described may be candidates for nomination or election to federal office in 1974, and in virtually every federal election year, there are some state legislators rated by NYCLU who also are federal candidates at the time the ratings are published. Affidavit ¶ 13; Deposition 92-93.

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9. NYCLU expects to publish these ratings again this summer and in the summer of 1976, times when primary elections are usually held. Deposition 118-19.

10. Almost all of NYCLU's public education activities are paid for out of general organizational funds supplied by membership dues and contributions, and the prime source of NYCLU's funds is contributions by members. Affidavit ¶ 20; Deposition 14-18.

11. NYCLU has in excess of 40,000 members in New York, who reside in all parts of the state. Affidavit ¶ 20; Deposition 100.

12. Membership dues are $15 per year, though many members contribute more than that, and approximately 500 contribute more than $100 per year. Affidavit ¶ 20; Deposition 100.

13. NYCLU's experience has been that membership in association or identification with and support for NYCLU is controversial. Affidavit ¶ 22; Deposition 27, 28-30, 32, 35-38, 40, 81, 83-84.

14. There is no specific evidence of a direct relationship between any harassments, reprisals, or threats of harassments or reprisals against persons associated with or

contributing to the New York Civil Liberties Union and their identification as contributors to the NYCLU. Tr. 31, 80, 132-33.

15. NYCLU members and contributors request explicit assurances that their membership will remain confidential and their contribution anonymous. Deposition 28. An average

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of 25-50 contributors to the NYCLU annually request anonymity, out of a membership totalling approximately 45,000. Of the 25-50, few possibly 4 or 5 -- make contributions in excess of $100. Tr. 43, 100.

16. Plaintiff NYCLU maintains two separate and distinct funds for accounting purposes. Entirely separate books are kept on those funds. The "501(c) (3) fund" receives contributions which are deductible for the contributor. The "501(c) (4) fund" receives contributions that are not deductible to the contributor. The membership dues to the plaintiff NYCLU are placed in the 501 (c) (4) fund. However, an individual may choose to have his contributions or funds placed in the 501 (c) (3) fund. Plaintiff NYCLU annually files tax returns on the 501 (c) (3) and the 501 (c) (4) accounts, and the NYCLU files all information required by the Internal Revenue Service, including "990 forms."

[045]

LAURA WERTHEIMER

1. In 1972, Laura Wertheimer managed the congressional campaign of Avi Nelson in the Republican primary in the Fourth Congressional District of Massachusetts. She is also active in the Libertarian Party and has engaged in campaign-funding solicitation for that Party in New York. Affidavit ¶1; Tr. 32-33; 38-39.

2. In the 1972 Republican primary in the Fourth Congressional District of Massachusetts, there were four candidates. Two were incumbent State elected officials; one was a former Congressman. Avi Nelson, the fourth, was a graduate student, had no connections with Republican organizations in the state, and had never held public office, and was living on student loans and savings. Affidavit ¶¶2, 3.

3. A poll taken in the spring of 1972 revealed that Nelson's name recognition factor among district voters was less than one percent. Affidavit ¶3.

4. In the early stages, Mr. Nelson's campaign was financed by a small number of contributions and loans, gathered through a series of personal fund-raising visits to individuals. Once this money was collected, it was possible for the campaign to make a mailing to district Republican activists (costing $5,000) and to place a large advertisement in a Boston newspaper. The campaign eventually raised a total of approximately $70,000 of which $22,000 is in still-outstanding loans. Affidavit ¶¶4-7; Tr. 46-47, 54, 59.

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5. In the four-way primary Mr. Nelson received 30.1 percent of the votes (6,115), finishing in second place behind the winner, who received 33.5 percent (16,811) of the votes. Affidavit ¶7.

6. Two persons solicited by Wertheimer in a Libertarian Party campaign refused to contribute because they were unwilling for their names to be disclosed or published. Tr. 32.

7. An individual who is unable to devote his time to a political campaign has options (absent statutory prohibition) to contribute either to the candidate or to the party. Affidavit ¶21.

8. Regarding the three persons who ran against Mr. Avi Nelson in the 1972 Republican primary for House of Representatives in the Massachusetts 4th district, Wertheimer testified that she did not know whether the two opponents, at that time members of the Massachusetts legislature, utilized staff members, free mailing privileges, or other privileges provided by the State of Massachusetts in the primary campaign. Tr. 8-11. The third opponent to Mr. Nelson was not an incumbent officeholder at the time of the 1972 Republican primary. Tr. 11.

9. Wertheimer testified that she did not know how much money was raised by Mr. Nelson or his opponents in contributions over $1,000 or the aggregate of those portions in contributions exceeding $1,000. Tr. 21-22.

[047]

10. At the time of the 1972 Republican primary in Massachusetts, Massachusetts law limited contributions to candidates to $3,000, but that limit did not apply to loans. Tr. 23-24.

11. Wertheimer is not aware of any incident of harassment or reprisal against persons whose names were reported as contributors to the Libertarian Party pursuant to New York law in the 1972 New York campaign discussed in her affidavit. Tr. 41.

[048]

CLARKE REED

1. Clarke Reed is Chairman of the Mississippi Republican Party, a political party in the State of Mississippi. It is part of the National Republican Party. The Mississippi Republican Party has nominated in the past and intends to nominate in 1976 candidates for the offices of President of the United States, United States Senator from the State of Mississippi, and Members of the United

States House of Representatives from some of the Congressional Districts of the State of Mississippi. The State Central Committee of the Mississippi Republican Party voted in 1972 not to solicit, receive, or expend money on behalf of candidates for the above-mentioned offices because it opposed in principle the requirements imposed on political committees which engaged in such activities by the FECA. Affidavit ¶ 1; Tr. 3, 6.

2. In 1972, Senator Eastland, the Democrat, received four times the amount of contributions than did Mr. Carmichael, his Republican opponent. Senator Eastland reported under the FECA spending $416,900. Of this amount, $55,700 was the excess of contributions of $1,000 or more by individuals and the excess of $5,000 or more by organizations. His Republican opponent Mr. Carmichael reported spending under the FECA $153,307. 114 individuals were identified as contributors to Mr. Carmichael's campaign and contributed $58,647. $13,700 is the excess of contributions over $1,000 contributed by individuals or $5,000 contributions by organizations to Mr. Carmichael's campaign.

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3. The State Central Committee of the Mississippi Republican Party has determined not to contribute over $1,000 to any future candidate for federal office exclusing it from the requirement to file as a political committee under the FECA. The State Central Committee determined not to contribute over $1,000 to any future candidate for federal office in order to protect the confidentiality of its contributors.

4. The State Central Committee of the Mississippi Republican Party is opposed to the disclosure of contributions in principle.

5. Reed has never written to a contributor to ask whether that contributor would mind having his or her name disclosed.

6. No individual who is making ongoing contributions to the Mississippi Republican Party ever told Reed they would withdraw his support if his name were disclosed.

7. The Mississippi Republican Party engaged in fund raising to finance the basic operations of the Party. Approximately 2/3 of the funds used to finance the base operations are derived from contributions in excess of $100 per year which comes from contributors of $10 per month made on a bank draft system. Affidavit ¶30; Tr. 55-56.

8. Becoming a reporting political committee would require the Mississippi Republican Party to disclose publicly all contributions in excess of $100, and all expenditures. The Party is fearful of such disclosure, because of those Party members who do not want their political contributions publicly known. Affidavit ¶29.

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9. The Mississippi Republican Party's basic fundraising system is such that a great number of contributors give in excess of $100 per year. A large portion of the Party's funds come from contributions of $10 per month made on a bank draft system. The Party raises approximately two-thirds of the funds used to run the base operations of the Party through the bank draft system. Affidavit ¶30, Tr. 55-56.

10. Some Mississippi Republicans have contributed in excess of $1,000 to Republican candidates for federal office in Mississippi.

11. Prior to the enactment of the Federal Election Campaign Act of 1971, the Mississippi Republican Party did contribute directly to federal candidates. Affidavit ¶36.

12. In 1966 the Mississippi Republican Party directly contributed to candidates for federal office as follows:

Alexander campaign	$ 7,565.45
McAllister campaign	7,864.51
Moyce campaign	7,672.66
Walker campaign	32,291.75
Wise campaign	7,555.51
Fund Raising Dinners	3,300.12
	$66,250.00

Reed Ex. 2.

13. The Mississippi Republican Party has only made one contribution in excess of $10,000 to a candidate for federal office and that was $15,000 to a candidate for Congress in 1970. Tr. 71-72.

14. Mr. Reed knows of no specific instances where anyone was harassed as a result of the reporting requirements of FECA. Tr. 84-85.

[051]

15. Reed does not know how many individuals contributed in excess of $1,000 to Mississippi Democratic candidates for federal office in 1972 and 1974; nor to Mississippi Republican candidates for federal office in 1974. Nor does he know how much in excess of $1,000 per individual was raised by Mississippi Republican and Democratic candidates for federal office in 1972 and 1974. He did not make an effort to determine how many individuals contributed in excess of $1,000. Tr. 77-78.

16. One candidate of the Mississippi Republican Party for federal office has beaten an incumbent Congressman or Senator. In 1964 Prentiss Walker defeated

Congressman Arthur Winstead in what was then known as the Fourth District of Mississippi. Available records do not reflect how much each candidate spent on his campaign. Affidavit ¶40.

[052]

JAMES C. ROBERTS

1. The Conservative Victory Fund (hereinafter CVF) is a registered political committee under the FECA and has disclosed the names of contributors of over $100 since the effective date of the FECA of 1971. Affidavit ¶3; Tr. 5-6. CVF and the American Conservative Union (hereinafter ACU) are affiliated. CVF and ACU have most of their officers in common, they share office space, they work on common matters in some cases, and both organizations share adherence to the same principles. Tr. 8-9.

2. CVF is an unincorporated association of the District of Columbia, established in 1970 for the purpose of raising funds to aid in the election of candidates for public office who are dedicated to the principles of conservatism. Affidavit ¶2. One of the purposes of the ACU is to lobby on behalf of or against specific legislation in Congress. Tr. 73.

3. James C. Roberts is Executive Director of the CVF, and executed the affidavit filed by CVF in this action. He first became affiliated with CVF in December 1974. From January 1974 to December 1974 he was an employee of the ACU. Affidavit ¶1; Tr. 5-7.

4. CVF pays no salaries. Roberts' salary is paid by ACU. Tr. 9.

5. CVF is not affiliated with the Conservative Party of New York. CVF and the Conservative Party of New York have one officer in common. Tr. 9, 10.

[053]

6. In 1974 the CVF received a contribution of $8,000 which was earmarked for a particular candidate. This contribution and the fact that it was earmarked for a particular candidate was disclosed on the report of receipts and expenditures filed by the CVF under the FECA. The contributor refused to give through his local party organization. Affidavit ¶5; Tr. 14.

7. In 1972 and 1974, the CVF contributed $220,080 to 118 candidates for federal office. Of this total, $48,650 was contributed to 35 incumbents, $60,250 was contributed to 29 challengers to incumbents, and $102,360 was contributed to 54 candidates running for unoccupied offices. Tr. 58-65, Exhibits 7 and 8.

Of the total $220,080 contributed to candidates for federal office in 1972 and 1974 by the CVF, $14,450 was the excess of nine contributions which exceeded $5,000. Tr. 58-65, Exhibits 7 and 8.

The $14,450 in contributions in excess of $5,000 is comprised of $6,000 excess contributed to one candidate, $6,400 excess contributed to six candidates running for unoccupied seats, and $2,050 excess contributed to two challengers to incumbents. Tr. 58-65, Exhibits 7 and 8.

In 1970 the CVF contributed $149,250 to 61 candidates for federal office. Of this total, 39,250 was contributed to 12 incumbents, $76,000 was contributed to 28 challengers to incumbents, and $34,000 was contributed to 21 candidates running for unoccupied offices.

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Of the total $149,250 contributed to candidates for federal office in 1970 by the CVF, $18,750 was the excess of seven contributors which exceeded $5,000.

The $18,750 in contributions in excess of $5,000 is comprised of $6,000 excess contributed to one candidate, $3,750 excess contributed to six candidates running for unoccupied seats, and $16,500 excess contributed to five challengers to incumbents.

8. In the three election years in which CVF has been active so far – 1970, 1972, and 1974 – it has contributed a total of approximately $370,000 to the campaigns of 179 candidates for the U.S. House and Senate. Affidavit ¶3; Tr. 51.

9. CVF solicits funds through the mail. Tr. 72.

10. Persons solicited by CVF for contributions are members of ACU, contributors to ACU, and persons on fund-raising lists which are available. Tr. 76.

11. In 1974, a typical fund-raising year for CVF, it received over 9,500 individual contributions. The approximate average contribution was $16. Affidavit ¶5.

12. CVF is not in any direct or indirect way connected to any political party. Affidavit ¶9.

13. In 1972 the CVF received three contributions over $1,000. One was for $1,500, one for $2,000 and the third was for $3,000. In 1974 the CVF received one contribution over $1,000 and that was for $8,000 and earmarked for a specific candidate. Affidavit ¶5; Tr. 14, Exhibit 1.

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14. The CVF has not made a campaign contribution to a Presidential candidate. Tr. 42.

15. The CVF does not now plan to form a new political party. Tr. 42-43.

16. In 1970 CVF contributed $8,000 to the unsuccessful conservative Republican candidacy of Anderson Carter for U.S. Senator from New Mexico. In 1972 CVF contributed $2,000 to the successful conservative Republican candidacy of Pete Domenici for U.S. Senator from New Mexico. CVF believes that the 1970 Carter campaign paved the way to some extent for the 1972 Domenici victory. Affidavit ¶17.

[056]

THOMAS S. WINTER

1. Thomas S. Winter is the Editor of HUMAN EVENTS, a weekly newspaper published by HUMAN EVENTS, INC., a Delaware Corporation. He has been with HUMAN EVENTS since 1961 and has been the Editor since 1966. HUMAN EVENTS, INC., is now owned solely by Winter and Allan H. Ryskind, HUMAN EVENTS Capitol Hill Editor. The newspaper is not controlled directly or indirectly by any political party or political committee. Affidavit ¶1.

2. Established in 1944, HUMAN EVENTS now has approximately 70,000 subscribers throughout the country. It weekly publishes a newspaper dealing primarily with events of political importance and interest, with the discussion of public issues and with discussion of public officials, political leaders and candidates. Many of these articles are made available in reprint form and thereby receive even wider distribution. HUMAN EVENTS also distributes books, tapes, pamphlets and other forms of communication to further its corporate and editorial purposes. Affidavit ¶2.

3. For approximately five months in every election year since 1962, HUMAN EVENTS runs a feature called "Races of the Week" in which it spotlights selected electoral contests that it feels would be of interest to its

readers. To date, it has run over 400 of these stories and intends to run this feature in 1976 and in every successive congressional election year. Affidavit ¶3.

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4. HUMAN EVENTS also published articles on selected special elections as they have arisen and it has run many articles on the various presidential candidates in the last 31 years. See attachments to affidavit of Thomas W. Winter. Affidavit ¶4.

5. HUMAN EVENTS endorses explicitly or by implication certain candidates for federal offices or, where it deems it necessary and appropriate, it refrains from endorsing any candidate for a particular federal office. Affidavit ¶5.

5. HUMAN EVENTS readers are active politically. Its most recent readership survey showed that in the 12 months prior to the survey, 14 percent of its subscribers held office in a political group or organization; 30 percent had been volunteer workers in a political campaign, 32 percent had attended regular meetings of political groups or organization; 70 percent had written letters to educators, editors or elected representatives; and 73 percent had made at least one financial contribution to a political party, a candidate or a political organization. Affidavit ¶7.

7. HUMAN EVENTS perceives its harm as arising from the fact that the statutory definition of "expenditure" in 2 U.S.C. § 431(f) and 18 U.S.C. § 591(f) explicitly exempts any "news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publications, unless such facilities are owned or controlled by any political party, political committee,

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or candidate" in contrast to the statutory definition of "contribution" in 2 U.S.C. § 431(e) and 18 U.S.C. § 591(3) which does not. Tr. 4.

8. HUMAN EVENTS has explicitly or implicitly endorsed candidates for federal office in the past and intends to do so in the future. Affidavit ¶10.

9. Every day, HUMAN EVENTS receives dozens of newsletters, speeches, and other material from members of Congress, distributed free of charge by the postal service. It uses some of this material. Affidavit ¶11A.

[059]

DANIEL JOY

1. Daniel Joy is the Treasurer of the American Conservative Union (ACU). He has had ten years of experience in organizations similar to ACU and four years of experience in ACU. Tr. 16; Affidavit ¶1; Tr. 3. Daniel Joy has participated in the campaigns of, and has personal knowledge of the fundraising activities of: Barry Goldwater's 1964 Presidential campaign; Claude Kirk's 1966 Gubernatorial campaign in Florida; Edward Gurney's 1968 Senatorial campaign in Florida; and William Scott's 1972 Senatorial campaign in Virginia. He also has personal knowledge of Robert Bauman's 1973 Congressional campaign in Maryland. Tr. 33-34.

2. ACU, a non-profit, voluntary, unincorporated association of the District of Columbia, was established in 1964 for the purpose of maintaining an organization for American people who adhere to the statement of principles outlined in ACU's constitution. Affidavit ¶2.

3. ACU has made contributions to candidates for federal office in the past. The ACU terminated its registration as a political committee under the FECA on

October 13, 1974, at which time it informed the Clerk of the House and the Secretary of the Senate that it had no intention to make political contributions to candidates for federal office. Joy Tr. at 9. It has not changed that policy. However, Daniel Joy testified that the ACU may in the future again become a political committee within the meaning of the reporting and disclosure requirements of the FECA as amended. Affidavit ¶2; Tr. 5-6.

[060]

4. ACU has a continuing and active interest in federal regulation of the political process. ACU has from time to time engaged in lobbying activities. Tr. 20-21.

5. ACU publishes, both in communications to its members and to the general public, annual ratings of all members of Congress which are distributed to its members and to the media. These ratings list the voting records of incumbent members of both Houses of Congress, showing whether these incumbents supported or opposed positions of interest to ACU and its members. Similarly distributed are ACU's positions on various public issues and political candidates. Affidavit ¶5.

6. ACU encourages its members, adherents and supporters to engage in whatever activities mentioned above they are willing and able to undertake. Affidavit ¶10.

7. As the ACU's past filings with the Clerk of the House and Secretary of the Senate will show, many contributors refuse to give the required information about occupation and place of business. Tr. 20.

8. The ACU reported the names and addresses of 137 individuals who contributed $100 or more to the ACU between April 7, 1972 and February 28, 1975, pursuant to the FECA. Joy Exhibits 2, 3 and 6. Mr. Joy did not know whether any contributor had been

harassed because of the disclosure of his contribution to CVF. Tr. 17. Mr. Joy has not been told that contributions to the ACU have declined since the effective date of the FECA. Tr. 19-20. No person has specifically told Mr. Joy that he will not contribute to the CVF because his name would be disclosed. Tr. 28.

[061]

9. Mr. Joy testified that persons have been harassed because they were in receipt of funds from ACU. Tr. 17-18.

10. In attempting to raise funds for Young Americans for Freedom in southern New England in 1965, Daniel Joy was told by a businessman who refused to contribute that while he would like to give money, the business community was hostile towards conservative political action. Another contributed but only after receiving a pledge from Joy that his name would not be divulged. That contribution was made in cash and on behalf of the YAF's collegiate chapter. Tr. 16-17, 23, 28.

11. The ACU has in the past made in-kind contributions to the CVF. Tr. 27. The ACU has also provided money for the CVF's direct-mail fundraising efforts. Tr. 11. For a variety of reasons a direct mail appeal may be a complete failure, and if a direct mail effort for an organization like ACU or CVF is a complete failure, it would be extremely difficult for those organizations to recoup. Tr. 31.

12. In the period 1972-1975, the ACU made one contribution of $2,500 to Mr. Robert Bauman, a candidate for federal office. Tr. 4, 7, 11. The Bauman for Congress Committee did not receive any contributions in excess of $5,000 from any political organization. Tr. 36.

13. Between April 7, 1972 and February 28, 1975, the ACU did not receive any contributions, in the aggregate, in excess of $1,000. Joy Exhibits 2, 3 and 6.

[062]

14. Larger contributions, those in the $1,000 range, are received very often towards the end of a candidate's political campaign. Tr. at 37, 39, 40.

[063]

EDWARD H. CRANE, III

1. Edward H. Crane, III, is the National Chairman of the Libertarian Party. Affidavit ¶ 1.

2. Formed in December 1971, the Libertarian Party held its first national nominating convention in June, 1972. It expended $1,423.91 for the convention. By that time, it had grown to a membership of nearly 1000. The delegates nominated Dr. John Hospers, a professor of philosophy at the University of Southern California, for President, and Ms. Thonie Nathan, a broadcast journalist and television producer for Vice President. Although the Libertarian Party was on the ballot in only two states in 1972, its national ticket travelled extensively throughout the country espousing the Libertarian Party philosophy. The Party ticket received one vote in the Electoral College in 1972. Its popular vote was approximately 10,000. By election day, 1972, membership had grown to 2000. Affidavit ¶ 5; Tr. 53-54, 59.

3. By 1974, Libertarian Party membership had grown to 5,000 individuals, and major campaign efforts were mounted in several federal elections. In Ohio, Ms. Kathleen Harroff received 79,400 votes (3 percent of the total) in her race for the United States Senate, finishing third behind Democrat John Glenn and Republican Ralph Perk. In Louisiana's Seventh Congressional

District, Mr. Jerry Millet, running against an incumbent, received 7,152 votes, 11 percent of the total votes case. In a number of these

[064]

races, candidates spent their own funds. Affidavit ¶ 7; Tr. 6-8, 14-15, although Crane does not know how much any Libertarian Party candidate has spent out of personal or immediate family funds on any campaign. Tr. 6-8.

4. In a New York Congressional race against incumbent Republican Hamilton Fish and Democrat Nick Angell, Mr. Sandy Cohen received 1.2 percent of the vote. Affidavit ¶ 8.

5. The Libertarian Party is now organized in forty states, and is a not-for-profit corporation under the Laws of the State of Colorado. Affidavit ¶ 9.

6. Crane does not know how many contributions to any of the Libertarian Party's federal candidates have been in excess of $1,000, nor does Mr. Crane know how much the candidates supported by the Libertarian Party for federal office spent on their campaigns or how much of what was spent was raised in contributions in excess of $1,000. Crane Exs. 6-19.

7. The Libertarian Party is a registered political committee under the FECA and has filed reports of receipts and expenditures since the date of its registration on June 26, 1972. The reports of receipts and expenditures filed by the Libertarian Party with the Supervisory Officers do not contain or show any contributions in excess of $1,000. Crane Exs. 1-10.

8. Crane estimates that of all contributions the Libertarian Party has received, approximately 10 out of 4,000 have been individual contributions in excess of $1,000. Tr. 55-57.

[065]

9. Approximately five individuals have indicated that they would exceed the $1,000 limit in monetary contributions. None of these individuals has given in excess of $1,000 in the past. Tr. 18-19.

10. The 1972 campaign of the Libertarian Party candidate for President spent between $5,000 and $6,000. Crane does not know how much any other Libertarian Party candidate spent on his or her campaign. Tr. 13-14.

11. The Libertarian Party has held one nominating convention in 1972, on which it spent $1,423.91. Tr. 53-54; Ex. 2, at 2.

12. Crane knows of no contributor to the Libertarian Party or to its candidate who incurred harm because of the disclosure of his name as a contributor. Tr. 38.

13. The names of contributors who have given over $100 have been disclosed in the past. None of these have indicated that they would not give again if the activity of disclosure continues. Tr. 57-58, 62.

[066]

HARRY M. FOX

1. Harry M. Fox was the Republican nominee for the House of Representatives from the Twelfth Congressional District of Pennsylvania in two elections in 1974. The first was a special general election on February 5, 1974, to fill the seat left vacant by the death of the long-time (thirteen term) Republican incumbent John Saylor. Mr. Fox had been Mr. Saylor's Administrative Assistant for 25 years. Fox's Democratic opponent was John P. Murtha who won. The vote totals in February were as follows:

Murtha (D)	60,538	(49.9%)
Fox (R)	60,416	(49.8%)
McCormick (Constitution Party)	472	
Total	121,426	
Murtha Plurality	122	

The second was the regular general election, held in November, 1974. In that election, Mr. Fox was also defeated. The vote totals in November were as follows:

Murtha (D)	89,193	(58.1%)
Fox (R)	64,416	(41.9%)
Other	10	
Total	153,619	
Murtha Plurality	24,777	

Registered Democrats outnumber Republicans by approximately 8,000 out of a total of approximately 200,000 voters in the Twelfth District. Affidavit ¶1; Tr. 7.

[067]

2. In the February 1974 special election Harry M. Fox spent approximately $75,000 and his successful opponent spent approximately $90,000. Tr. 4.

3. In the February 1974 special election Mr. Fox received approximately $10,000 in contributions equal to or over $1,000. Two individuals contributed $3,000 each, and there were $2,000 and $1,000 contributions. Tr. 22.

4. In the November 1974 regular election, Mr. Fox received approximately five contributions in excess of $1,000. Tr. 22.

5. In the November general election, Mr. Fox's campaign spent approximately $42,000, and Mr. Murtha's spent approximately $55,000. Affidavit ¶17.

JAMES L. BUCKLEY, et al.,
Plaintiffs,
v. **Civil Action No. 75-0001**

HON. FRANCIS R. VALEO, et al.,
Defendants.

PART IV. CONSTITUTIONAL QUESTIONS

May 19, 1975

* * *

[001]

CONSTITUTIONAL QUESTIONS

1. Does the first sentence of §315(a) of the Federal Election Campaign Act, *as amended*, 2 U.S.C. §437h(a), in the context of this action, require courts of the United States to render advisory opinions in violation of the "case or controversy" requirement of Article III, §2, of the Constitution of the United States?

2. Has each of the plaintiffs alleged sufficient injury to his constitutional rights enumerated in the following questions to create a constitutional "case or controversy" within the judicial power under Article III?

3. Does any statutory limitation, or do the particular limitations in the challenged statutes, on the amounts that individuals or organizations may contribute or expend in connection with elections for federal office violate the rights of one or more of the plaintiffs under the First, Fifth, or Ninth Amendment or the Due Process Clause of the Fifth Amendment of the Constitution of the United States?

(a) Does 18 U.S.C. §608(a) violate such rights, in that it forbids a candidate or the members of his immediate family from expending personal funds in excess of the amounts specified in 18 U.S.C. §608(a)(1)? (First Amended Complaint (FAC) ¶¶ 56, 59, 60, 61, 62, 86, 87, 88.)

[002]

(b) Does 18 U.S.C. §608(b) violate such rights, in that it forbids the solicitation, receipt or making of contributions on behalf of political candidates in excess of the amounts specified in 18 U.S.C. §608(b)? (FAC ¶¶ 55, 59, 60, 61, 62, 86, 87, 88.)

(c) Do 18 U.S.C. §§591(e) and 608(b) violate such rights, in that they limit the incidental expenses which volunteers working on behalf of political candidates may incur to the amounts specified in 18 U.S.C. §§591(e) and 608(b)? (FAC ¶¶ 57, 59, 60, 61, 62, 86, 87, 88.)

(d) Does 18 U.S.C. §608(e) violate such rights, in that it limits to $1,000 the independent (not on behalf of a candidate) expenditures of any person relative to an identified candidate? (FAC ¶¶ 59, 60, 61, 62, 76, 86, 87, 88.)

(e) Does 18 U.S.C. §608(f) violate such rights, in that it limits the expenditures of national or state committees of political parties in connection with general election campaigns for federal office? (FAC ¶¶ 59, 60, 61, 62, 63, 64, 65, 86, 87, 88.)

(f) Does §9008 of the Internal Revenue Code of 1954 violate such rights, in that it limits the expenditures of the national committee of a party with respect to presidential nominating

[003]

conventions? (FAC ¶¶ 59, 60, 61, 62, 63, 64, 65, 86.)

(g) Do 2 U.S.C. §431(e) and (f) and 18 U.S.C. §591(e) and (f) violate such rights, in that they exempt news stories, commentaries, and editorials from the statutory definitions of "expenditure" but not from the statutory definitions of "contribution?" (FAC ¶¶ 84, 86, 87, 88.)

(g) Does 18 U.S.C. §608(b)(2) violate such rights, in that it excludes from the definition of "political committee" committees registered for less than the period of time prescribed in the statute? (FAC ¶¶ 59, 60, 61, 62, 77, 86, 87, 88.)

(i) Do 18 U.S.C. §608 and §9012 of the Internal Revenue Code of 1954 violate such rights, in that they provide that the government may bring criminal prosecutions against anyone who violates or is about to violate the provisions recited in those sections? (FAC ¶¶ 78, 86, 87, 88.)

4. Does any statutory limitation, or do the particular limitations in the challenged statutes, on the amounts that candidates for elected federal office may expend in their campaigns violate the rights of one or more of the plaintiffs under the First or Ninth Amendment or the Due Process Clause of the Fifth Amendment?

[004]

(a) Does 18 U.S.C. §608(c) violate such rights, in that it forbids expenditures by candidates for federal office in excess of the amounts specified in 18 U.S.C. §608(c)? (FAC ¶¶ 58, 59, 60, 61, 62, 86, 87, 88.)

(b) Do 18 U.S.C. §608 and §9012 of the Internal Revenue Code of 1954 violate such rights, in that they provide that the government may bring criminal prosecutions against anyone who violates or is about to violate the provisions recited in those sections? (FAC ¶¶ 78, 86, 87, 88.)

5. Does any statutory provision for the public financing of political conventions or campaigns for nomination or election to the Presidency or Vice Presidency violate the rights of one or more of the plaintiffs under the First or Ninth Amendment, the Due Process Clause of the Fifth Amendment, or Article I, Section 8, Clause 1, of the Constitution of the United States? (FAC ¶¶ 79, 80, 81, 82, 86, 87, 88.)

6. Do the particular provisions of Subtitle H and §6096 of the Internal Revenue Code of 1954 deprive one or more of the plaintiffs of such rights under the First or Ninth Amendment or Article I, Section 8, Clause 1, in that they provide federal tax money to support certain political candidates, parties, movements, and organizations or in the manner that they so provide such federal tax money? (FAC ¶¶ 79, 80, 81, 82, 86, 87, 88.)

[005]

7. Do the particular requirements in the challenged statutes that persons disclose the amounts that they contribute or expend in connection with elections for federal office or that candidates for such office disclose the amounts that they expend in their campaigns violate the rights of one or more of the plaintiffs under the First, Fourth, or Ninth Amendment or the Due Process Clause of the Fifth Amendment?

(a) Do 2 U.S.C. §§432(b), (c), and (d) and 438(a)(8) violate such rights, in that they provide, through auditing procedures, for the Federal Election Commission to inspect lists and records required to be kept by political committees of individuals who contribute more than $10? (FAC ¶¶ 70, 86, 87, 88.)

(b) Does 2 U.S.C. §434(b)(1)-(8) violate such rights, in that it requires political committees to register and disclose the names, occupations, and principal places of buisiness (if any) of those of their contributors who contribute in excess of $100? (FAC ¶¶ 71, 86, 87, 88.)

(c) Does 2 U.S.C. §434(d) violate such rights, in that it neither requires disclosure of nor treats as contribution to or expenditure by incumbent officeholders the resources enumerated in 2 U.S.C. §434(d)? (FAC ¶¶ 72, 86, 87, 88.)

(d) Does 2 U.S.C. §434(e) violate such rights, in that it provides that every person contributing or expending more than $100 other than by contribution to a political committee or candidate (including volunteers with incidental expenses in

[006]

excess of $600) must make disclosure to the Federal Election Commission? (FAC ¶¶ 73, 86, 87, 88.)

(e) Does 2 U.S.C. §437a violate such rights, in that it requires any person who expends funds or commits any act for the purpose of influencing the outcome of an election or who publishes or broadcasts to the public any material advocating the election or defeat of a candidate, setting forth a candidate's position on any

public issue, his voting record, or any official acts to file reports with the Commission as if such person were a political committee? (FAC ¶¶ 74, 86, 87, 88.)

(f) Does 2 U.S.C. §441 violate such rights, in that it provides criminal penalties for violations of Chapter 14 of Title 2, U.S.C.? (FAC ¶¶ 75, 86, 87, 88.)

8. Do the provisions in the challenged statutes concerning the powers and method of appointment of the Federal Election Commission violate the rights of one or more of the plaintiffs under the constitutional separation of powers, the First, Fourth, Fifth, Sixth, or Ninth Amendment, Article I, Section 2, Clause 6, Article I, Section 5, Clause 1, or Article III?

(a) Does 2 U.S.C. §437(a) violate such rights by the method of appointment of the Federal Election Commission? (FAC ¶¶ 66, 86, 87, 88.)

[007]

(b) Do 2 U.S.C. §§437d and 437g violate such rights, in that they entrust administration and enforcement of the FECA to the Federal Election Commission? (FAC ¶¶ 67, 86, 87, 88.)

(c) Does 2 U.S.C. §467g(a) violate such rights, in that it empowers the Federal Election Commission and the Attorney General to bring civil actions (including proceedings for injunctions) against any person who has engaged or who may engage in acts or practices which violate the Federal Election Campaign Act, *as amended*, or §608, 610, 611, 613, 614, 615, 616, or 617 of Title 18? (FAC ¶¶ 83, 86, 87, 88.)

(d) Does 2 U.S.C. §438(c) violate such rights, in that it empowers the Federal Election Commission to make

rules under the FECA in the manner specified therein? (FAC ¶¶ 68, 86, 87, 88.)

(e) Does 2 U.S.C. §456 violate such rights, in that it imposes a temporary disqualification on any candidate for election to federal office who is found by the Federal Election Commission to have failed to file a report required by Title III of the Federal Election Campaign Act, *as amended*? (FAC ¶¶ 69, 86, 87, 88.)

(f) Does §9008 of the Internal Revenue Code of 1954 violate such rights, in that it empowers the Federal Election Commission to authorize expenditures of the national committee of a party

[008]

with respect to presidential nominating conventions in excess of the limits enumerated therein? (FAC ¶¶ 59, 60, 61, 62, 63, 64, 65, 86.)

9. Do 2 U.S.C. §§431(b), (d), (e), and (f); 434(e); 437(a), 437(d), 437(g)(5-7), and 456; 18 U.S.C. §§591(b), (d), (e) and (f); 608(b) (6), (c) (4), (e); Internal Revenue Code of 1954 §§9002(2), (9); 9006(d); 9008(d)(3); 9032(2), (4), (8), and (9), and 9037 violate the constitutional rights of one or more of the plaintiffs in that they are excessively vague? (FAC ¶¶ 85, 87, 88.)

---

common cause
2030 M STREET, N.W., WASHINGTON, D. C. 20036
John W. Gardner, Chairman (202) 833-1200

July 16, 1975

The Honorable Howard Corcoran
United States District Court
for the District of Columbia
John Marshall Place & Constitution Avenue
Washington, D. C.

Dear Judge Corcoran:

It has been brought to my attention that a few typographical errors were made in the Conway findings, Section II.A. at pages 1, *et seq.*, when they were submitted to the Court. They do not materially affect any party's arguments. We would appreciate, however, having the record corrected to avoid any misinterpretations of the facts being made. The corrections to be made are:

p. 88, ¶ 12: "$1,184,204" *should read:* "$1,284,204."

p. 95, ¶ 32: "$351,557" *should read:* "$352,557."

p. 100, ¶ 49: "24 major party challengers" *should read:* "25 major party challengers."

p. 110, ¶ 72: "September 1, 1973 through December 31, 1975" *should read:* "January 1, 1971 through December 31, 1972."

p. 110, ¶ 73: "September 1, 1973 through December 31, 1974" *should read:* "January 1, 1971 through December 31, 1972."

p. 111, ¶ 74: "September 1, 1973 through December 31, 1974" *should read:* "January 1, 1971 through December 31, 1972."

p. 112, ¶ 75: "September 1, 1973 through December 31, 1974" *should read:* "January 1, 1971 through December 31, 1972."

p. 112, ¶ 76: "September 1, 1973 through December 1, 1974" *should read:* "April 7, 1972 through December 31, 1972."

p. 120, ¶ 96: "October 14, 1973" *should read:* "October 14, 1974."

p. 121, ¶ 99: "October 14, 1972" *should read:* "October 14, 1974."

p. 125, ¶ 107: "September 1, 1974" *should read:* "September 1, 1973."

I apologize for the inconvenience that these changes may impose upon the Court.

Sincerely,

/s/ Kenneth J. Guido, Jr.
Kenneth J. Guido, Jr.
Counsel for Intervening
Defendants, Common Cause
and John Gardner

75-436
75-437

Supreme Court, U. S.
FILED
SEP 19 1975
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

Nos. and

JAMES L. BUCKLEY, *et al.*,

Appellants,

v.

FRANCIS R. VALEO, *et al.*,

Appellees.

ON APPEAL FROM THE
UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JOINT APPENDIX (VOL. III)
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FEDERAL ELECTION CAMPAIGN LAWS

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RULES AND ADMINISTRATION
UNITED STATES SENATE

JANUARY 1975

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PREFACE

Over the last several years, far-reaching changes have been made in the laws affecting Federal elections and election campaign practices. These reforms, because they touch on so many varied aspects of the electoral process, are only to be found scattered among the different titles of the United States Code, among the volumes of the United States Statutes at Large, or in recent slip laws.

The Senate Committee on Rules and Administration perceived the need and usefulness of a small pamphlet that could present to candidates for Federal office the most pertinent of these new laws in a single compilation and in the most up-to-date form. The Committee accordingly requested the Office of the Secretary of the Senate to prepare such a booklet in order that candidates might be better able to determine and meet the requirements demanded by current legislation.

This document is, therefore, a compilation of Federal election campaign laws, gathered together in a codified form. This style was adopted because it was considered the most suitable for presenting the laws in the most timely manner, unhampered by provisions that have been repealed or are otherwise irrelevant. The citations to the United States Code have been retained in order to facilitate cross-references among this pamphlet, the United States Code, and the United States Code Annotated.

Users of this compilation should be aware that many terms relating to elections (such as "election," "candidate," "contribution," "expenditure," etc.) are used repeatedly in the law, but are frequently redefined from title to title. Thus, the meaning of a particular term may not be consistent throughout this pamphlet. Care should be exercised to check for the definitions provided in any given title or section.

It should also be understood that the omission of any section or sections from the numerical sequence indicates that the content of the missing part is irrelevant to the purposes of this compilation, that the section has been repealed, or that the section number does not exist at the present time.

Every effort has been made to include the most recent legislation on elections, especially the Federal Election Campaign Act of 1971 (P.L. 92–225) and the Federal Election Campaign Act Amendments of 1974 (P.L. 93–443). A number of other important election laws are also included, such as the Hatch Act and the relevant sections of the Communications Act of 1934, both as most recently amended.

Generally, the Federal Election Campaign Act Amendments of 1974 became effective January 1, 1975. Those provisions, however, dealing with the effect on State law became effective October 15, 1974, while those amending Title 26 apply with respect to taxable years beginning after December 31, 1974.

This compilation can be regarded as comprehensive and accurate as of the end of the Ninety-third Congress in December 1974. The compiler was Patrick T. Ortiz, Reference Assistant on the staff of the Senate Library.

FRANCIS R. VALEO,
Secretary of the Senate.

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[1] Sec. 440 was stricken from the United States Code by P.L. 93-443. Its provisions are now governed by 18 U.S.C. § 614.

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TITLE 2. THE CONGRESS

CHAPTER 1—ELECTION OF SENATORS AND REPRESENTATIVES

§ 1. Time for election of Senators

At the regular election held in any State next preceding the expiration of the term for which any Senator was elected to represent such State in Congress, at which election a Representative to Congress is regularly by law to be chosen, a U.S. Senator from said State shall be elected by the people thereof for the term commencing on the third day of January next thereafter.

§ 1a. Election to be certified by Governor

It shall be the duty of the executive of the State from which any Senator has been chosen to certify his election, under the seal of the State, to the President of the Senate of the United States.

§ 1b. Same; countersignature by Secretary of State

The certificate mentioned in section 1a of this title shall be countersigned by the Secretary of State of the State.

§ 7. Time of election

The Tuesday next after the first Monday in November, in every even numbered year, is established as the day for the election, in each of the States and territories of the United States, of Representatives and Delegates to the Congress commencing on the third day of January next thereafter. This section shall not apply to any State that has not yet changed its day of election, and whose constitution must be amended in order to effect a change in the day of the election of State officers in said State.

§ 8. Vacancies

The time for holding elections in any State, district, or territory for a Representative or Delegate to fill a vacancy, whether such vacancy is caused by a failure to elect at the time prescribed by law, or by the death, resignation, or incapacity of a person elected, may be prescribed by the laws of the several States and territories respectively.

§ 9. Voting for Representatives

All votes for Representatives in Congress must be by written or printed ballot, or voting machine, the use of which has been duly authorized by the State law; and all votes received or recorded contrary to this section shall be of no effect.

[N.B. Chapter 8, known as the Federal Corrupt Practices Act, was repealed by the Federal Election Campaign Act of 1971 (P.L. 92-225)]

CHAPTER 12—CONTESTED ELECTIONS

§ 381. Definitions

For purposes of this chapter—

(a) The term "election" means an official general or special election to choose a Representative in or Resident Commissioner to the Con-

gress of the United States, but does not include a primary election, or a caucus or convention of a political party.

(b) The term "candidate" means an individual—

(1) whose name is printed on the official ballot for election to the House of Representatives of the United States; or

(2) notwithstanding his name is not printed on such ballot, who seeks election to the House of Representatives by write-in votes, provided that he is qualified for such office and that, under the law of the State in which the congressional district is located, write-in voting for such office is permitted and he is eligible to receive write-in votes in such election.

(c) The term "contestant" means an individual who contests the election of a Member of the House of Representatives of the United States under this chapter.

(d) The term "contestee" means a Member of the House of Representatives of the United States whose election is contested under this chapter.

(e) The term "Member" means an incumbent Representative in or Resident Commissioner to the Congress of the United States, or an individual who has been elected to either of such offices but has not taken the oath of office.

(f) The term "Clerk" means the Clerk of the House of Representatives of the United States.

(g) The term "committee" means the Committee on House Administration of the House of Representatives of the United States.

(h) The term "State" includes territory and possession of the United States.

(i) The term "write-in vote" means a vote cast for a person whose name does not appear on the official ballot by writing in the name of such person on such ballot or by any other method prescribed by the law of the State in which the election is held.

§ 382. Notice of contest

(a) *Filing of notice.* Whoever, having been a candidate for election to the House of Representatives in the last preceding election and claiming a right to such office, intends to contest the election of a Member of the House of Representatives, shall, within 30 days after the result of such election shall have been declared by the officer or board of canvassers authorized by law to declare such result, file with the Clerk and serve upon the contestee written notice of his intention to contest such election.

(b) *Contents and form of notice.* Such notice shall state with particularity the grounds upon which contestant contests the election and shall state that an answer thereto must be served upon contestant under section 383 of this title within 30 days after service of such notice. Such notice shall be signed by contestant and verified by his oath or affirmation.

(c) *Service of notice; proof of service.* Service of the notice of contest upon contestee shall be made as follows:

(1) by delivering a copy to him personally;

(2) by leaving a copy at his dwelling house or usual place of abode with a person of discretion not less than 16 years of age then residing therein;

(3) by leaving a copy at his principal office or place of business with some person then in charge thereof;

(4) by delivering a copy to an agent authorized by appointment to receive service of such notice; or

(5) by mailing a copy by registered or certified mail addressed to contestee at his residence or principal office or place of business. Service by mail is complete upon mailing;

(6) the verified return by the person so serving such notice, setting forth the time and manner of such service shall be proof of same, and the return post office receipt shall be proof of the service of said notice mailed by registered or certified mail as aforesaid. Proof of service shall be made to the Clerk promptly and in any event within the time during which the contestee must answer the notice of contest. Failure to make proof of service does not affect the validity of the service.

§ 383. Response of contestee

(a) *Answer.* Any contestee upon whom a notice of contest as described in section 382 of this title shall be served, shall, within 30 days after the service thereof, serve upon contestant a written answer to such notice, admitting or denying the averments upon which contestant relies. If contestee is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this shall have the effect of a denial. Such answer shall set forth affirmatively any other defenses, in law or fact, on which contestee relies. Contestee shall sign and verify such answer by oath or affirmation.

(b) *Defenses by motion prior to answer.* At the option of contestee, the following defenses may be made by motion served upon contestant prior to contestee's answer:

(1) insufficiency of service of notice of contest;

(2) lack of standing of contestant;

(3) failure of notice of contest to state grounds sufficient to change result of election;

(4) failure of contestant to claim right to contestee's seat.

(c) *Motion for more definite statement.* If a notice of contest to which an answer is required is so vague or ambiguous that the contestee cannot reasonably be required to frame a responsive answer, he may move for a more definite statement before interposing his answer. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the committee is not obeyed within 10 days after notice of the order or within such other time as the committee may fix, the committee may dismiss the action, or make such order as it deems just.

(d) *Time for serving answer after service of motion.* Service of a motion permitted under this section alters the time for serving the answer as follows, unless a different time is fixed by order of the committee: If the committee denies the motion or postpones its disposition until the hearing on the merits, the answer shall be served within 10 days after notice of such action. If the committee grants a motion for a more definite statement the answer shall be served within 10 days after service of the more definite statement.

§ 384. Service and filing of papers other than notice of contest

(a) *Modes of service.* Except for the notice of contest, every paper required to be served shall be served upon the attorney representing

the party, or, if he is not represented by an attorney, upon the party himself. Service upon the attorney or upon a party shall be made—

(1) by delivering a copy to him personally;

(2) by leaving it at his principal office with some person then in charge thereof; or if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with a person of discretion not less than 16 years of age then residing therein; or

(3) by mailing it addressed to the person to be served at his residence or principal office. Service by mail is complete upon mailing.

(b) *Filing of papers with clerk.* All papers subsequent to the notice of contest required to be served upon the opposing party shall be filed with the Clerk either before service or within a reasonable time thereafter.

(c) *Proof of service.* Papers filed subsequent to the notice of contest shall be accompanied by proof of service showing the time and manner of service, made by affidavit of the person making service or by certificate of an attorney representing the party in whose behalf service is made. Failure to make proof of service does not affect the validity of such service.

§ 385. Default of contestee

The failure of contestee to answer the notice of contest or to otherwise defend as provided by this chapter shall not be deemed an admission of the truth of the averments in the notice of contest. Notwithstanding such failure, the burden is upon contestant to prove that the election results entitle him to contestee's seat.

§ 386. Deposition

(a) *Oral examination.* Either party may take the testimony of any person, including the opposing party, by deposition upon oral examination for the purpose of discovery or for use as evidence in the contested election case, or for both purposes. Depositions shall be taken only within the time for the taking of testimony prescribed in this section.

(b) *Scope of examination.* Witnesses may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending contested election case, whether it relates to the claim or defense of the examining party or the claim or defense of the opposing party, including the existence, description, nature, custody, condition, and location of any books, papers, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts. After the examining party has examined the witness the opposing party may cross-examine.

(c) *Order and time of taking testimony.* The order in which the parties may take testimony shall be as follows:

(1) contestant may take testimony within 30 days after service of the answer, or if no answer is served within the time provided in section 383 of this title, within 30 days after the time for answer has expired;

(2) contestee may take testimony within 30 days after contestant's time for taking testimony has expired;

(3) if contestee has taken any testimony or has filed testimonial affidavits or stipulations under section 387(c) of this title, contestant may take rebuttal testimony within 10 days after contestee's time for taking testimony has expired.

(d) *Officer before whom testimony may be taken.* Testimony shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

(e) *Subpena.* Attendance of witnesses may be compelled by subpena as provided in section 388 of this title.

(f) *Taking of testimony by party or his agent.* At the taking of testimony, a party may appear and act in person, or by his agent or attorney.

(g) *Conduct of examination; recordation of testimony; notation of objections; interrogatories.* The officer before whom testimony is to be taken shall put the witness under oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed. All objections made at the time of examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, a party served with a notice of deposition may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim.

(h) *Examination of deposition by witness; signature of witness or officer; use of deposition.* When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and the parties. Any changes in the form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall be signed by the witness, unless the parties, by stipulation, waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and note on the deposition the fact of the waiver or of the illness or the absence of the witness or the fact of refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress, the committee rules that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

§ 387. Notice of depositions

(a) *Time for service; form.* A party desiring to take the deposition of any person upon oral examination shall serve written notice on the opposing party not later than 2 days before the date of the examination. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined. A copy of such notice, together with proof of such service thereof, shall be attached to the deposition when it is filed with the Clerk.

(b) *Testimony by stipulation.* By written stipulation of the parties, the deposition of a witness may be taken without notice. A copy of

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such stipulation will be attached to the deposition when it is filed with the Clerk.

(c) *Testimony by affidavit; time for filing.* By written stipulation of the parties, the testimony of any witness of either party may be filed in the form of an affidavit by such witness or the parties may agree what a particular witness would testify to if his deposition were taken. Such testimonial affidavits or stipulations shall be filed within the time limits prescribed for the taking of testimony in section 386 of this title.

§ 388. Subpena for attendance at deposition

(a) *Issuance.* Upon application of any party, a subpena for attendance at a deposition shall be issued by—

(1) a judge or clerk of the U.S. district court for the district in which the place of examination is located;

(2) a judge or clerk of any court of record of the State in which the place of examination is located; or

(3) a judge or clerk of any court of record of the county in which the place of examination is located.

(b) *Time, method, and proof of service.* Service of the subpena shall be made upon the witness no later than 3 days before the day on which his attendance is directed. A subpena may be served by any person who is not a party to the contested election case and is not less than 18 years of age. Service of a subpena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fee for one day's attendance and the mileage allowed by section 389 of this title. Written proof of service shall be made under oath by the person making same and shall be filed with the Clerk.

(c) *Place of examination.* A witness may be required to attend an examination only in the county where he resides or is employed, or transacts his business in person, or is served with a subpena, or within 40 miles of the place of service.

(d) *Form.* Every subpena shall state the name and title of the officer issuing same and the title of the contested election case, and shall command each person to whom it is directed to attend and give testimony at a time and place and before an officer specified therein.

(e) *Production of documents.* A subpena may also command the person to whom it is directed to produce the books, papers, documents, or other tangible things designated therein, but the committee, upon motion promptly made and in any event at or before the time specified in the subpena for compliance therewith, may—

(1) quash or modify the subpena if it is unreasonable or oppressive; or

(2) condition denial of the motion upon the advancement by the party in whose behalf the subpena is issued of the reasonable cost of producing the books, papers, documents, or tangible things. In the case of public records or documents, copies thereof, certified by the person having official custody thereof, may be produced in lieu of the originals.

§ 389. Officer and witness fees

(a) Each judge, clerk of court, or other officer who issues any subpena or takes a deposition and each person who serves any subpena or other paper herein authorized shall be entitled to receive from the party at whose instance the service shall have been performed such fees as are allowed for similar services in the district courts of the United States.

(b) Witnesses whose depositions are taken shall be entitled to receive from the party at whose instance the witness appeared the same fees and travel allowance paid to witnesses subpenaed to appear before the House of Representatives or its committees.

§ 390. Penalty for failure to appear, testify, or produce documents

Every person who, having been subpenaed as a witness under this chapter to give testimony or to produce documents, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the contested election case, shall be deemed guilty of a misdemeanor punishable by fine of not more than $1,000 nor less than $100 or imprisonment for not less than 1 month nor more than 12 months, or both.

§ 391. Certification and filing of depositions

(a) *Sealing of papers; deposit with Clerk.* The officer before whom any deposition is taken shall certify thereon that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition, together with any papers produced by the witness and the notice of deposition or stipulation, if the deposition was taken without notice, in an envelope endorsed with the title of the contested election case and marked "Deposition of (here insert name of witness)" and shall within 30 days after completion of the witness' testimony, file it with the Clerk.

(b) *Notification of filing.* After filing the deposition, the officer shall promptly notify the parties of its filing.

(c) *Copy of deposition to parties or deponents.* Upon payment of reasonable charges therefor, not to exceed the charges allowed in the district court of the United States for the district wherein the place of examination is located, the officer shall furnish a copy of deposition to any party or the deponent.

§ 392. Record

(a) *Hearing on papers, depositions, and exhibits.* Contested election cases shall be heard by the committee on the papers, depositions, and exhibits filed with the Clerk. Such papers, depositions, and exhibits shall constitute the record of the case.

(b) *Appendix to contestant's brief.* Contestant shall print as an appendix to his brief those portions of the record which he desires the committee to consider in order to decide the case and such other portions of the record as may be prescribed by the rules of the committee.

(c) *Appendix to contestee's brief.* Contestee shall print as an appendix to his brief those portions of the record not printed by contestant which contestee desires the committee to consider in order to decide the case.

(d) *Contestant's brief; service on contestee.* Within 45 days after the time for both parties to take testimony has expired, contestant shall serve on contestee his printed brief of the facts and authorities relied on to establish his case together with his appendix.

(e) *Contestee's brief; service on contestant.* Within 30 days of service of contestant's brief and appendix, contestee shall serve on contestant his printed brief of the facts and authorities relied on to establish his case together with his appendix.

(f) *Reply brief of contestant.* Within 10 days after service of contestee's brief and appendix, contestant may serve on contestee a printed reply brief.

(g) *Form of briefs; number of copies served and filed.* The form and length of the briefs, the form of the appendixes, and the number of copies to be served and filed shall be in accordance with such rules as the committee may prescribe.

§ 393. Filing of pleadings, motions, depositions, appendixes, briefs, and other papers

(a) Filings of pleadings, motions, depositions, appendixes, briefs, and other papers shall be accomplished by—

(1) delivering a copy thereof to the Clerk of the House of Representatives at his office in Washington, D.C., or to a member of his staff at such office; or

(2) mailing a copy thereof, by registered or certified mail, addressed to the Clerk at the House of Representatives, Washington, D.C.: *Provided*, That if such copy is not actually received, another copy shall be filed within a reasonable time; and

(3) delivering or mailing, simultaneously with the delivery or mailing of a copy thereof under paragraphs (1) and (2) of this subsection, such additional copies as the committee may by rule prescribe.

(b) All papers filed with the Clerk pursuant to this chapter shall be promptly transmitted by him to the committee.

§ 394. Computation of time

(a) *Method of computing time.* In computing any period of time prescribed or allowed by this chapter or by the rules or any order of the committee, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. For the purposes of this chapter, "legal holiday" shall mean New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States.

(b) *Service by mail.* Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after the service of a pleading, motion, notice, brief, or other paper upon him, which is served upon him by mail, 3 days shall be added to the prescribed period.

(c) *Enlargement of time.* When by this chapter or by the rules or any order of the committee an act is required or allowed to be done at or within a specified time, the committee, for good cause shown, may at any time in its discretion—

(1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or

(2) upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect, but it shall not extend the time for serving and filing the notice of contest under section 382 of this title.

§ 395. Death of contestant

In the event of the death of the contestant, the contested election case shall abate.

§ 396. Allowance of party's expenses

The committee may allow any party reimbursement from the contingent fund of the House of Representatives of his reasonable expenses of the contested election case, including reasonable attorneys fees, upon the verified application of such party accompanied by a complete and detailed account of his expenses and supporting vouchers and receipts.

Chapter 14—Federal Election Campaigns

§ 431. Definitions

When used in this chapter—

(a) "election" means—

(1) a general, special, primary, or runoff election;

(2) a convention or caucus of a political party held to nominate a candidate;

(3) a primary election held for the selection of delegates to a national nominating convention of a political party; and

(4) a primary election held for the expression of a preference for the nomination of persons for election to the office of President;

(b) "candidate" means an individual who seeks nomination for election, or election, to Federal office, whether or not such individual is elected, and, for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, if he has—

(1) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, to Federal office; or

(2) received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office;

(c) "Federal office" means the office of President or Vice President of the United States; or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States;

(d) "political committee" means any committee, club, association, or other group of persons which receives contributions or makes expenditures during a calendar year in an aggregate amount exceeding $1,000;

(e) "contribution"—

(1) means a gift, subscription, loan, advance, or deposit of money or anything of value made for the purpose of—

(A) influencing the nomination for election, or election, of any person to Federal office or for the purpose of influencing the results of a primary held for the selection of delegates to a national nominating convention of a political party; or

(B) influencing the result of an election held for the expression of a preference for the nomination of persons for election to the office of President of the United States;

(2) means a contract, promise, or agreement, expressed or implied, whether or not legally enforceable, to make a contribution for such purposes;

(3) means funds received by a political committee which are transferred to such committee from another political committee or other source;

(4) means the payment, by any person other than a candidate or a political committee, of compensation for the personal services of another person which are rendered to such candidate or political committee without charge for any such purpose; but

(5) does not include—

(A) the value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee;

(B) the use of real or personal property and the cost of invitations, food, and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual's residential premises for candidate-related activities;

(C) the sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if such charge for use in a candidate's campaign is at least equal to the cost of such food or beverage to the vendor;

(D) any unreimbursed payment for travel expenses made by an individual who on his own behalf volunteers his personal services to a candidate;

(E) the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot, or other printed listing, of three or more candidates for any public office for which an election is held in the State in which such committee is organized, except that this clause shall not apply in the case of costs incurred by such committee with respect to a display of any such listing made on broadcasting stations, or in newspapers, magazines, or other similar types of general public political advertising; or

(F) any payment made or obligation incurred by a corporation or a labor organization which, under the provisions of the last paragraph of section 610 of title 18, United States Code, would not constitute an expenditure by such corporation or labor organization;

to the extent that the cumulative value of activities by any individual on behalf of any candidate under each of clauses (B), (C), and (D) does not exceed $500 with respect to any election;

(f) "expenditure"—

(1) means a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made for the purpose of—

(A) influencing the nomination for election, or the election, of any person to Federal office, or to the office of presidential and vice presidential elector; or

(B) influencing the results of a primary election held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President of the United States;

(2) means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure;

(3) means the transfer of funds by a political committee to another political committee; but

(4) does not include—

(A) any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate;

(B) nonpartisan activity designed to encourage individuals to register to vote, or to vote;

(C) any communication by any membership organization or corporation to its members or stockholders, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any person to Federal office;

(D) the use of real or personal property and the cost of invitations, food, and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual's residential premises for candidate-related activities if the cumulative value of such activities by such individual on behalf of any candidate do not exceed $500 with respect to any election;

(E) any unreimbursed payment for travel expenses made by an individual who, on his own behalf, volunteers his personal services to a candidate if the cumulative amount for such individual incurred with respect to such candidate does not exceed $500 with respect to any election;

(F) any communication by any person which is not made for the purpose of influencing the nomination for election, or election, of any person to Federal office; or

(G) the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot, or other printed listing, of three or more candidates for any public office for which an election is held in the State in which such committee is organized, except that this clause shall not apply in the case of costs incurred by such committee with respect to a display of any such listing made on broadcasting stations, or in newspapers, magazines, or other similar types of general public political advertising; or

(H) any payment made or obligation incurred by a corporation or a labor organization which, under the provisions of the last paragraph of section 610 of title 18, United States Code, would not constitute an expenditure by such corporation or labor organization;

(g) "Commission" means the Federal Election Commission;

(h) "person" means an individual, partnership, committee, association, corporation, labor organization, and any other organization or group of persons;

(i) "State" means each State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;

(j) "identification" means—

(1) in the case of an individual, his full name and the full address of his principal place of residence; and

(2) in the case of any other person, the full name and address of such person;

(k) "national committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level, as determined by the Commission;

(l) "State committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission;

(m) "political party" means an association, committee, or organization which nominates a candidate for election to any Federal office, whose name appears on the election ballot as the candidate of such association, committee, or organization; and

(n) "principal campaign committee" means the principal campaign committee designated by a candidate under section 432(f)(1) of this title.

§ 432. Organization of political committees

(a) *Chairman; treasurer; vacancies; official authorizations.* Every political committee shall have a chairman and a treasurer. No contribution and no expenditure shall be accepted or made by or on behalf of a political committee at a time when there is a vacancy in the office of chairman or treasurer thereof. No expenditure shall be made for or on behalf of a political committee without the authorization of its chairman or treasurer, or their designated agents.

(b) *Account of contributions; segregated funds.* Every person who receives a contribution in excess of $10 for a political committee shall, on demand of the treasurer, and in any event within 5 days after receipt of such contribution, render to the treasurer a detailed account thereof, including the amount of the contribution and the identification of the person making such contribution, and the date on which received. All funds of a political committee shall be segregated from, and may not be commingled with, any personal funds of officers, members, or associates of such committee.

(c) *Recordkeeping.* It shall be the duty of the treasurer of a political committee to keep a detailed and exact amount of—

(1) all contributions made to or for such committee;

(2) the identification of every person making a contribution in excess of $10, and the date and amount thereof and, if a person's contributions aggregate more than $100, the account shall include occupation, and the principal place of business (if any);

(3) all expenditures made by or on behalf of such committee; and

(4) the identification of every person to whom any expenditure is made, the date and amount thereof and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made.

(d) *Receipts; preservation.* It shall be the duty of the treasurer to obtain and keep a receipted bill, stating the particulars, for every expenditure made by or on behalf of a political committee in excess of $100 in amount, and for any such expenditure in a lesser amount, if the aggregate amount of such expenditures to the same person during a calendar year exceeds $100. The treasurer shall preserve all receipted bills and accounts required to be kept by this section for periods of time to be determined by the Commission.

(e) *Unauthorized activities; notice.* Any political committee which solicits or receives contributions or makes expenditures on behalf of any candidate that is not authorized in writing by such candidate to do so shall include a notice on the face or front page of all literature and advertisements published in connection with such candidate's campaign by such committee or on its behalf stating that the committee is not authorized by such candidate and that such candidate is not responsible for the activities of such committee.

(f) *Principal campaign committee; reports, filing.* (1) Each individual who is a candidate for Federal office (other than the office of Vice President of the United States) shall designate a political committee to serve as his principal campaign committee. No political committee may be designated as the principal campaign committee of more than one candidate, except that the candidate for the office of President of the United States nominated by a political party may designate the national committee of such political party as his principal campaign committee. Except as provided in the preceding sentence, no political committee which supports more than one candidate may be designated as a principal campaign committee.

(2) Notwithstanding any other provision of this title, each report or statement of contributions received or expenditures made by a political committee (other than a principal campaign committee) which is

required to be filed with the Commission under this title shall be filed instead with the principal campaign committee for the candidate on whose behalf such contributions are accepted or such expenditures are made.

(3) It shall be the duty of each principal campaign committee to receive all reports and statements required to be filed with it under paragraph (2) of this subsection and to compile and file such reports and statements, together with its own reports and statements, with the Commission in accordance with the provisions of this title.

§ 433. Registration of political committees

(a) *Statements of organization.* Each political committee which anticipates receiving contributions or making expenditures during the calendar year in an aggregate amount exceeding $1,000 shall file with the Commission a statement of organization, within 10 days after its organization or, if later, 10 days after the date on which it has information which causes the committee to anticipate it will receive contributions or make expenditures in excess of $1,000. Each such committee in existence at the date of enactment of this act shall file a statement of organization with the Commission at such time as it prescribes.

(b) *Contents of statements.* The statement of organization shall include—

(1) the name and address of the committee;

(2) the names, addresses, and relationships of affiliated or connected organizations;

(3) the area, scope, or jurisdiction of the committee;

(4) the name, address, and position of the custodian of books and accounts;

(5) the name, address, and position of other principal officers, including officers and members of the finance committee, if any;

(6) the name, address, office sought, and party affiliation of—

(A) each candidate whom the committee is supporting; and

(B) any other individual, if any, whom the committee is supporting for nomination for election, or election, to any public office whatever; or, if the committee is supporting the entire ticket of any party, the name of the party;

(7) a statement whether the committee is a continuing one;

(8) the disposition of residual funds which will be made in the event of dissolution;

(9) a listing of all banks, safety deposit boxes, or other repositories used;

(10) a statement of the reports required to be filed by the committee with State or local officers, and, if so, the names, addresses, and positions of such persons; and

(11) such other information as shall be required by the Commission.

(c) *Information changes; report.* Any change in information previously submitted in a statement of organization shall be reported to the Commission within a 10-day period following the change.

(d) *Disbanding of political committees or contributions and expenditures below prescribed ceiling; notice.* Any committee which, after having filed one or more statements of organizations, disbands or determines it will no longer receive contributions or make expenditures during the calendar year in an aggregate amount exceeding $1,000 shall so notify the Commission.

(e) *Committees other than principal campaign committee; filing of reports.* In the case of a political committee which is not a principal campaign committee, reports and notifications required under this section to be filed with the Commission shall be filed instead with the appropriate principal campaign committee.

§ 434. Reports [1]

(a) *Receipts and expenditures; completion date, exception.*

(1) Except as provided by paragraph 2, each treasurer of a political committee supporting a candidate or candidates for election to Federal office, and each candidate for election to such office, shall file with the Commission reports of receipts and expenditures on forms to be prescribed or approved by it.

The reports referred to in the preceding sentence shall be filed as follows:

(A) (i) In any calendar year in which an individual is a candidate for Federal office and an election for such Federal office is held in such year, such reports shall be filed not later than the 10th day before the date on which such election is held and shall be complete as of the 15th day before the date of such election: except that any such report filed by registered or certified mail must be postmarked not later than the close of the 12th day before the date of such election:

(ii) such reports shall be filed not later than the 30th day after the date of such election and shall be complete as of the 20th day after the date of such election.

(B) In any other calendar year in which an individual is a candidate for Federal office, such reports shall be filed after December 31 of such calendar year, but not later than January 31 of the following calendar year and shall be complete as of the close of the calendar year with respect to which the report is filed.

(C) Such reports shall be filed not later than the 10th day following the close of any calendar quarter in which the candidate or political committee concerned received contributions in excess of $1,000, or made expenditures in excess of $1,000, and shall be complete as of the close of such calendar quarter: except that any such report required to be filed after December 31 of any calendar year with respect to which a report is required to be filed under subparagraph (B) shall be filed as provided in such subparagraph.

(D) When the last day for filing any quarterly report required by subparagraph (C) occurs within 10 days of an election, the filing of such quarterly report shall be waived and superseded by the report required by subparagraph (A) (i).

Any contribution of $1,000 or more received after the 15th day, but more than 48 hours, before any election shall be reported within 48 hours after its receipt.

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[1] Notwithstanding the amendment to section 434 of the United States Code relating to the time for filing reports, made by the provisions of section 204 of the Federal Election Campaign Act Amendments of 1974 (P.L. 93-443), nothing in this Act shall be construed to waive the report required to be filed by January 31, 1975, under the provisions of such section 434, as in effect on the date of the enactment of this Act.

"This Act" refers to the Federal Election Campaign Act of 1971, P.L. 92-225, as amended by P.L. 93-443, the Federal Election Campaign Act Amendments of 1974. This will be true whenever the term "this Act" appears.

(2) Each treasurer of a political committee which is not a principal campaign committee shall file the reports required under this section with the appropriate principal campaign committee.

(3) Upon a request made by a presidential candidate or a political committee which operates in more than one State, or upon its own motion, the Commission may waive the reporting dates set forth in paragraph (1) (other than the reporting date set forth in paragraph (1)(B)), and require instead that such candidate or political committee file reports not less frequently than monthly. The Commission may not require a presidential candidate or a political committee operating in more than one State to file more than 12 reports (not counting any report referred to in paragraph (1)(B)) during any calendar year. If the Commission acts on its own motion under this paragraph with respect to a candidate or a political committee, such candidate or committee may obtain judicial review in accordance with the provisions of chapter 7 of title 5, United States Code.

(b) *Contents of reports.* Each report under this section shall disclose—

(1) the amount of cash on hand at the beginning of the reporting period;

(2) the full name and mailing address (occupation and the principal place of business, if any) of each person who has made one or more contributions to or for such committee or candidate (including the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events) within the calendar year in an aggregate amount or value in excess of $100, together with the amount and date of such contributions;

(3) the total sum of individual contributions made to or for such committee or candidate during the reporting period and not reported under paragraph (2);

(4) the name and addresss of each political committee or candidate from which the reporting committee or the candidate received, or to which that committee or candidate made, any transfer of funds, together with the amounts and dates of all transfers;

(5) each loan to or from any person within the calendar year in an aggregate amount or value in excess of $100, together with the full names and mailing addresses (occupations and the principal places of business, if any) of the lender, endosers, and guarantors, if any, the date and amount of such loans;

(6) the total amount of proceeds from—

(A) the sale of tickets to each dinner, luncheon, rally, and other fundraising event;

(B) mass collections made at such events; and

(C) sales of items such as political campaign pins, buttons, badges, flags, emblems, hats, banners, literature, and similar materials;

(7) each contribution, rebate, refund, or other receipt in excess of $100 not otherwise listed under paragraphs (2) through (6);

(8) the total sum of all receipts by or for such committee or candidate during the reporting period, together with total receipts less transfers between political committees which support the same candidate and which do not support more than one candidate;

(9) the identification of each person to whom expenditures have been made by such committee or on behalf of such committee or candidate within the calendar year in an aggregate amount or value in excess of $100, the amount, date, and purpose of each such expenditure and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made;

(10) the identification of each person to whom an expenditure for personal services, salaries, and reimbursed expenses in excess of $100 has been made, and which is not otherwise reported, including the amount, date, and purpose of such expenditure;

(11) the total sum of expenditures made by such committee or candidate during the calendar year, together with total expenditures less transfers between political committees which support the same candidate and which do not support more than one candidate;

(12) the amount and nature of debts and obligations owed by or to the committee, in such form as the commission may prescribe and a continuous reporting of their debts and obligations after the election at such periods as the commission may require until such debts and obligations are extinguished, together with a statement as to the circumstances and conditions under which any such debt or obligation is extinguished and the consideration therefore; and

(13) such other information as shall be required by the Commission.

(c) *Cumulative reports for calendar year; amounts for unchanged items carried forward; statement of inactive status.* The reports required to be filed by subsection (a) of this section shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous report during such year, only the amount need be carried forward. If no contributions or expenditures have been accepted or expended during a calendar year, the treasurer of the political committee or candidate shall file a statement to that effect.

(d) *Members of Congress, reporting exemption.* This section does not require a Member of the Congress to report, as contributions received or as expenditures made, the value of photographic , matting, or recording services furnished to him by the Senate Recording Studio, the House Recording Studio, or by an individual whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives and who furnishes such services as his primary duty as an employee of the Senate or House of Representatives, or if such services were paid for by the Republican or Democratic Senatorial Campaign Committee, the Democratic National Congressional Committee, or the National Republican Congressional Committee. This subsection does not apply to such recording services furnished during the calendar year before the year in which the Member's term expires.

(e) *Contributions or expenditures by person other than political committee or candidate.* Every person (other than a political committee or candidate) who makes contributions or expenditures, other than by contribution to a poltical committee or candidate, in an aggre-

gate amount in excess of $100 within a calendar year shall file with the Commission a statement containing the information required by this section. Statements required by this subsection shall be filed on the dates on which reports by political committees are filed but need not be cumulative.

§ 435. Requirements relating to campaign advertising

(a) No person who sells space in a newspaper or magazine to a candidate, or to the agent of a candidate, for use in connection with such candidate's campaign, may charge any amount for such space which exceeds the amount charged for comparable use of such space for other purposes.

(b) Each political committee shall include on the face or front page of all literature and advertisements soliciting contributions the following notice:

"A copy of our report is filed with the Federal Election Commission and is available for purchase from the Federal Election Commission, Washington, D.C.".

§ 436. Formal requirements respecting reports and statements

(a) *Copy; preservation.* A copy of a report or statement shall be preserved by the person filing it for a period of time to be designated by the Commission in a published regulation.

(b) *Waiver of reporting requirements.* The Commission may, by a rule of general applicability which is published in the Federal Register not less than 30 days before its effective date, relieve—

(1) any category of candidates of the obligation to comply personally with the reporting requirements of section 434 of this title, if it determines that such action is consistent with the purposes of this Act; and

(2) any category of political committees of the obligation to comply with the reporting requirements of such section if such committees—

(A) primarily support persons seeking State or local office; and

(B) do not operate in more than one State or do not operate on a statewide basis.

(c) *Debts, pledges, etc.; separate schedules; aggregate amounts based upon actual payment.* The Commisison shall, by published regulations of general applicability, prescribe the manner in which contributions and expenditures in the nature of debts and other contracts, agreements, and promises to make contributions or expenditures shall be reported. Such regulations shall provide that they be reported in separate schedules. In determining aggregate amounts of contributions and expenditures, amounts reported as provided in such regulations shall not be considered until actual payment is made.

(d) *Postmark as date of filing.* If a report or statement required by sections 433, 434(a)(1)(A)(ii), 434(a)(1)(B), 434(a)(1)(C), or 434(e) of this title to be filed by a treasurer of a political committee or by a candidate or by any other person, is delivered by registered or certified mail, to the Commission or principal campaign committee with which it is required to be filed, the United States postmark stamped

on the cover of the envelope or other container in which such report or statement is so mailed shall be deemed to be the date of filing.

§ 437. Reports on convention financing

Each committee or other organization which—

(1) represents a State, or a political subdivision thereof, or any group of persons, in dealing with officials of a national political party with respect to matters involving a convention held in such State or political subdivision to nominate a candidate for the office of President or Vice President, or

(2) represents a national political party in making arrangements for the convention of such party held to nominate a candidate for the office of President or Vice President,

shall within 60 days following the end of the convention (but not later than 20 days prior to the date on which presidential and vice presidential electors are chosen), file with the Federal Election Commission a full and complete financial statement, in such form and detail as it may prescribe, of the sources from which it derived its funds, and the purposes for which such funds were expended.

§ 437a. Reports by certain persons

Any person (other than an individual) who expends any funds or commits any act directed to the public for the purpose of influencing the outcome of an election, or who publishes or broadcasts to the public any material referring to a candidate (by name, description, or other reference) advocating the election or defeat of such candidate, setting forth the candidate's position on any public issue, his voting record, or other official acts (in the case of a candidate who holds or has held Federal office), or otherwise designed to influence individuals to cast their votes for or against such candidates or to withhold their votes from such candidates shall file reports with the Commission as if such person were a political committee. The reports filed by such person shall set forth the source of the funds used in carrying out any activity described in the preceding sentence in the same detail as if the funds were contributions within the meaning of section 431(e) of this title, and payments of such funds in the same detail as if they were expenditures within the meaning of section 431(f) of this title. The provisions of this section do not apply to any publication or broadcast of the United States Government or to any news story, commentary, or editorial distributed through the facilities of a broadcasting station or a bona fide newspaper, magazine, or other periodical publication. A news story, commentary, or editorial is not considered to be distributed through a bona fide newspaper, magazine, or other periodical publication if—

(1) such publication is primarily for distribution to individuals affiliated by membership or stock ownership with the person (other than an individual) distributing it or causing it to be distributed, and not primarily for purchase by the public at newsstands or by paid subscription; or

(2) the news story, commentary, or editorial is distributed by a person (other than an individual) who devotes a substantial part of his activities to attempting to influence the outcome of elections, or to influence public opinion with respect to matters of national or State policy or concern.

§ 437b. Campaign depositories

(a)(1) Each candidate shall designate one or more national or State banks as his campaign depositories. The principal campaign committee of such candidate, and any other political committee authorized by him to receive contributions or to make expenditures on his behalf, shall maintain a checking account at a depository designated by the candidate and shall deposit any contributions received by such committee into such account. A candidate shall deposit any payment received by him under chapter 95 or chapter 97 of Title 26 of the United States Code in the account maintained by his principal campaign committee. No expenditure may be made by any such committee on behalf of a candidate or to influence his election except by check drawn on such account, other than petty cash expenditures as provided in subsection (b).

(2) The treasurer of each political committee (other than a political committee authorized by a candidate to receive contributions or to make expenditures on his behalf) shall designate one or more national or State banks as campaign depositories of such committee, and shall maintain a checking account for the committee at each such depository. All contributions received by such committee shall be deposited in such accounts. No expenditure may be made by such committee except by check drawn on such accounts, other than petty cash expenditures as provided in subsection (b).

(b) A political committee may maintain a petty cash fund out of which it may make expenditures not in excess of $100 to any person in connection with a single purchase or transaction. A record of petty cash disbursements shall be kept in accordance with requirements established by the Commission, and such statements and reports thereof shall be furnished to the Commission as it may require.

(c) A candidate for nomination for election, or for election, to the office of President of the United States may establish one such depository in each State, which shall be considered as his campaign depository for such State by his principal campaign committee and any other political committee authorized by him to receive contributions or to make expenditures on his behalf in such State, under rules prescribed by the Commission. The campaign depository of the candidate of a political party for election of the office of Vice President of the United States shall be the campaign depository designated by the candidate of such party for election to the office of President of the United States.

§ 437c. Federal Election Commission [2]

(a)(1) There is established a commission to be known as the Federal Election Commission. The Commission is composed of the

[2] Until the appointment and qualification of all the members of the Federal Election Commission and its general counsel and until the transfer provided for in this section, the Comptroller General, the Secretary of the Senate, and the Clerk of the House of Representatives shall continue to carry out their responsibilities under title I and title III of the Federal Election Campaign Act of 1971 as such titles existed on the day before the date of enactment of the Federal Election Campaign Act Amendments of 1974. Upon the appointment of all the members of the Commission and its general counsel, the Comptroller General, the Secretary of the Senate, and the Clerk of the House of Representatives shall meet with the Commission and arrange for the transfer, within 30 days after the date on which all such members and the general counsel are appointed, of copies of all appropriate records, documents, memorandums, and other papers associated with carrying out their responsibilities under title I and title III of the Federal Election Campaign Act of 1971 and chapter 95 of Title 26 of the U.S. Code.

Secretary of the Senate and the Clerk of the House of Representatives, ex officio and without the right to vote, and six members appointed as follows:

(A) two shall be appointed, with the confirmation of a majority of both Houses of the Congress, by the President pro tempore of the Senate upon the recommendations of the majority leader of the Senate and the minority leader of the Senate;

(B) two shall be appointed, with the confirmation of a majority of both Houses of the Congress, by the Speaker of the House of Representatives, upon the recommendations of the majority leader of the House and the minority leader of the House; and

(C) two shall be appointed, with the confirmation of a majority of both Houses of the Congress, by the President of the United States.

A member appointed under subparagraph (A), (B), or (C) shall not be affiliated with the same political party as the other member appointed under such paragraph.

(2) Member of the Commission shall serve for terms of 6 years, except that of the members first appointed—

(A) one of the members appointed under paragraph (1)(A) shall be appointed for a term ending on the April 30 first occurring more than 6 months after the date on which he is appointed;

(B) one of the members appointed under paragraph (1)(B) shall be appointed for a term ending 1 year after the April 30 on which the term of the member referred to in subparagraph (A) of this paragraph ends;

(C) one of the members appointed under paragraph (1)(C) shall be appointed for a term ending 2 years thereafter;

(D) one of the members appointed under paragraph (1)(A) shall be appointed for a term ending 3 years thereafter;

(E) one of the members appointed under paragraph (1)(B) shall be appointed for a term ending 4 years thereafter; and

(F) one of the members appointed under paragraph (1)(C) shall be appointed for a term ending 5 years thereafter.

An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed only for the unexpired term of the member he succeeds. Any vacany occurring in the membership of the Commission shall be filled in the same manner as in the case of the original appointment.

(3) Members shall be chosen on the basis of their maturity, experience, integrity, impartiality, and good judgment and shall be chosen from among individuals who, at the time of their appointment, are not elected or appointed officers or employees in the executive, legislative, or judicial branch of the Government of the United States.

(4) Members of the Commission (other than the Secretary of the Senate and the Clerk of the House of Representatives) shall receive compensation equivalent to the compensation paid at level IV of the executive schedule (5 U.S.C. § 5315).

(5) The Commission shall elect a chairman and a vice chairman from among its members (other than the Secretary of the Senate and the Clerk of the House of Representatives) for a term of 1 year. No member may serve as chairman more often than once during any

term of office to which he is appointed. The chairman and the vice chairman shall not be affiliated with the same political party. The vice chairman shall act as chairman in the absence or disability of the chairman, or in the event of a vacancy in such office.

(b) The Commission shall administer, seek to obtain compliance with, and formulate policy with respect to this Act and sections 608, 610, 611, 613, 614, 615, 616, and 617 of Title 18, United States Code. The Commission has primary jurisdiction with respect to the civil enforcement of such provisions.

(c) All decisions of the Commission with respect to the exercise of its duties and powers under the provisions of this title shall be made by a majority vote of the members of the Commission. A member of the Commission may not delegate to any person his vote or any decision-making authority or duty vested in the Commission by the provisions of this title.

(d) The Commission shall meet at least once each month and also at the call of any member.

(e) The Commission shall prepare written rules for the conduct of its activities, shall have an official seal which shall be judicially noticed, and shall have its principal office in or near the District of Columbia (but it may meet or exercise any of its powers anywhere in the United States).

(f)(1) The Commission shall have a staff director and a general counsel who shall be appointed by the Commission. The staff director shall be paid at a rate not to exceed the rate of basic pay in effect for level IV of the executive schedule (5 U.S.C. § 5315). The general counsel shall be paid at a rate not to exceed the rate of basic pay in effect for level V of the executive schedule (5 U.S.C. § 5316). With the approval of the Commission, the staff director may appoint and fix the pay of such additional personnel as he considers desirable.

(2) With the approval of the Commission, the staff director may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of Title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS–15 of the general schedule (5 U.S.C. § 5332).

(3) In carrying out its responsibilities under this Act, the Commission shall, to the fullest extent practicable, avail itself of the assistance, including personnel and facilities, of other agencies and departments of the United States Government. The heads of such agencies and departments may make available to the Commission such personnel, facilities, and other assistance, with or without reimbursement, as the Commission may request.

§ 437d. Powers of Commission

(a) The Commission has the power—

(1) to require, by special or general orders, any person to submit in writing such reports and answers to questions as the Commission may prescribe; and such submission shall be made within such a reasonable period of time and under oath or otherwise as the Commission may determine;

(2) to administer oaths or affirmations;

(3) to require by subpena, signed by the chairman or the vice chairman, the attendance and testimony of witnesses and

the production of all documentary evidence relating to the execution of its duties;

(4) in any proceeding or investigation, to order testimony to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection;

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States;

(6) to initiate (through civil proceedings for injunctive, declaratory, or other appropriate relief), defend, or appeal any civil action in the name of the Commission for the purpose of enforcing the provisions of this Act, through its general counsel;

(7) to render advisory opinions under section 437f of this title;

(8) to make, amend, and repeal such rules, pursuant to the provisions of chapter 5 of Title 5, United States Code, as are necessary to carry out the provisions of this Act;

(9) to formulate general policy with respect to the administration of this Act and sections 608, 610, 611, 613, 614, 615, 616, and 617 of Title 18, United States Code;

(10) to develop prescribed forms under subsection (a)(1) of this section;

(11) to conduct investigations and hearings expeditiously, to encourage voluntary compliance, and to report apparent violations to the appropriate law enforcement authorities.

(b) Any United States district court within the jurisdiction of which any inquiry is carried on, may, upon petition by the Commission, in case of refusal to obey a subpena or order of the Commission issued under subsection (a) of this section, issue an order requiring compliance therewith. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(c) No person shall be subject to civil liability to any person (other than the Commission or the United States) for disclosing information at the request of the Commission.

(d)(1) Whenever the Commission submits any budget estimate or request to the President of the United States or the Office of Management and Budget, it shall concurrently transmit a copy of such estimate or request to the Congress.

(2) Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation, requested by the Congress or by any Member of the Congress, to the President of the United States or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress or to the Member requesting the same. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, testimony, or comments on legislation, to any office or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

§ 437e. Reports

The Commission shall transmit reports to the President of the United States and to each House of the Congress no later than March

31 of each year. Each such report shall contain a detailed statement with respect to the activities of the Commission in carrying out its duties under this title, together with recommendations for such legislative or other action as the Commission considers appropriate.

§ 437f. Advisory opinions

(a) Upon written request to the Commission by any individual holding Federal office, any candidate for Federal office, or any political committee, the Commission shall render an advisory opinion, in writing, within a reasonable time with respect to whether any specific transaction or activity by such individual, candidate, or political committee would constitute a violation of this act, of chapter 95 or chapter 96 of Title 26 of the U.S. Code, or of section 608, 610, 611, 613, 614, 615, 616, or 617 of Title 18, United States Code.

(b) Notwithstanding any other provision of law, any person with respect to whom an advisory opinion is rendered under subsection (a) who acts in good faith in accordance with the provisions and findings of such advisory opinion shall be presumed to be in compliance with the provision of this act, of chapter 95 or chapter 96 of Title 26 of the U.S. Code, or of section 608, 610, 611, 613, 614, 615, 616, or 617 of Title 18, United States Code, with respect to which such advisory opinion is rendered.

(c) Any request made under subsection (a) shall be made public by the Commission. The Commission shall before rendering an advisory opinion with respect to such request, provide any interested party with an opportunity to transmit written comments to the Commission with respect to such request.

§ 437g. Enforcement

(a)(1)(A) Any person who believes a violation of this act or of section 608, 610, 611, 613, 614, 615, 616, or 617 of Title 18, United States Code, has occurred may file a complaint with the Commission.

(B) In any case in which the Clerk of the House of Representatives or the Secretary of the Senate (who receive reports and statements as custodian for the Commission) has reason to believe a violation of this act or section 608, 610, 611, 613, 614, 615, 616, or 617, of Title 18, United States Code, has occurred he shall refer such apparent violation to the Commission.

(2) The Commission upon receiving any complaint under paragraph (1)(A), or a referral under paragraph (1)(B), or if it has reason to believe that any person has committed a violation of any such provision, shall notify the person involved of such apparent violation and shall—

(A) report such apparent violation to the Attorney General; or

(B) make an investigation of such apparent violation.

(3) Any investigation under paragraph (2)(B) shall be conducted expeditiously and shall include an investigation of reports and statements filed by any complainant under this title, if such complainant is a candidate. Any notification or investigation made under paragraph (2) shall not be made public by the Commission or by any other person without the written consent of the person receiving such notification or the person with respect to whom such investigation is made.

(4) The Commission shall, at the request of any person who receives

notice of an apparent violation under paragraph (2), conduct a hearing with respect to such apparent violation.

(5) If the Commission determines, after investigation, that there is reason to believe that any person has engaged, or is about to engage in any acts or practices which constitute or will constitute a violation of this Act, it may endeavor to correct such violation by informal methods of conference, conciliation, and persuasion. If the Commission fails to correct the violation through informal methods, it may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which the person against whom such action is brought is found, resides, or transacts business. Upon a proper showing that such person has engaged or is about to engage in such acts or practices, the court shall grant a permanent or temporary injunction, restraining order, or other order.

(6) The Commission shall refer apparent violations to the appropriate law enforcement authorities to the extent that violations of provisions of chapter 29 of Title 18, United States Code, are involved, or if the Commission is unable to correct apparent violations of this Act under the authority given it by paragraph (5), or if the Commission determines that any such referral is appropriate.

(7) Whenever in the judgment of the Commission, after affording due notice and an opportunity for a hearing, any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act or of section 608, 610, 611, 613, 614, 615, 616, or 617 of Title 18, United States Code upon request by the Commission the Attorney General on behalf of the United States shall institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which the person is found, resides, or transacts business. Upon a proper showing that such person has engaged or is about to engage in such acts or practices, a permanent or temporary injunction, restraining order, or other order shall be granted without bond by such court.

(8) In any action brought under paragraph (5) or (7) of this subsection, subpenas for witnesses who are required to attend a United States district court may run into any other district.

(9) Any party aggrieved by an order granted under paragraph (5) or (7) of this subsection may, at any time within 60 days after the date of entry thereof, file a petition with the United States court of appeals for the circuit in which such order was issued for judicial review of such order.

(10) The judgment of the court of appeals affirming or setting aside, in whole or in part, any such order of the district court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 28, United States Code.

(11) Any action brought under this subsection shall be advanced on the docket of the court in which filed, and put ahead of all other actions (other than other actions brought under this subsection or under section 437h of this title).

(b) In any case in which the Commission refers an apparent violation to the Attorney General, the Attorney General shall respond by report to the Commission with respect to any action taken by the Attorney General regarding such apparent violation. Each report shall be transmitted no later than 60 days after the date the Commission refers any apparent violation, and at the close of every 30-day period thereafter until there is final disposition of such apparent violation. The Commission may from time to time prepare and publish reports on the status of such referrals.

§ 437h. Judicial review

(a) The Commission, the national committee of any political party, or any individual eligible to vote in any election for the office of President of the United States may institute such actions in the appropriate district court of the United States, including actions for declaratory judgment, as may be appropriate to construe the constitutionality of any provision of this Act or of section 608, 610, 611, 613, 614, 615, 616, or 617 of Title 18, United States Code. The district court immediately shall certify all questions of constitutionality of this Act or of section 608, 610, 611, 613, 614, 615, 616, or 617 of Title 18, United States Code, to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc.

(b) Notwithstanding any other provision of law, any decision on a matter certified under subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States. Such appeal shall be brought no later than 20 days after the decision of the court of appeals.

(c) It shall be the duty of the court of appeals and of the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter certified under subsection (a).

§ 438. Administrative and judicial provisions [3]

(a) *Duties.* It shall be the duty of the Commission—

(1) *Forms.* To develop and furnish to the person required by the provisions of this Act prescribed forms for the making of the reports and statements required to be filed with it under this chapter;

(2) *Manual for uniform bookkeeping and reporting methods.* To prepare, publish, and furnish to the person required to file such reports and statements a manual setting forth recommended uniform methods of bookkeeping and reporting;

(3) *Filing, coding, and cross-indexing system.* To develop a filing, coding, and cross-indexing system consonant with the purposes of this chapter;

(4) *Public inspection; copies; sale or use restrictions.* To make the reports and statements filed with it available for public inspection and copying, commencing as soon as practicable but not later than the end of the second day following the day during which it was received, and to permit copying of any such report

[3] Nothwithstanding section 308(a)(7) of the Federal Election Campaign Act of 1971 (relating to an annual report by the supervisory officer), as in effect on the day before the effective date of the amendments made by paragraph (1) of section 209(a) of the Federal Election Campaign Act Amendments of 1974, no such annual report shall be required with respect to any calendar year beginning after December 31, 1972.

or statement by hand or by duplicating machine, as requested by any person, at the expense of such person: *Provided*, That any information copied from such reports and statements shall not be sold or utilized by any person for the purpose of soliciting contributions or for any commercial purpose;

(5) *Preservation of reports and statements.* To preserve such reports and statements for a period of 10 years from date of receipt, except that reports and statements relating solely to candidates for the House of Representatives shall be preserved for only 5 years from the date of receipt;

(6) *Index of reports and statements; publication in Federal Register.* To compile and maintain a cumulative index of reports and statements filed with it, which shall be published in the Federal Register at regular intervals and which shall be available for purchase directly or by mail for a reasonable price;

(7) *Special reports; publication.* To prepare and publish from time to time special reports listing those candidates for whom reports were filed as required by this title and those candidates for whom such reports were not filed as so required;

(8) *Audits; investigations.* To make from time to time audits and field investigations with respect to reports and statements filed under the provisions of this chapter, and with respect to alleged failures to file any report or statement required under the provisions of this chapter;

(9) *Enforcement authorities; reports of violations.* To report apparent violations of law to the appropriate law enforcement authorities; and

(10) *Rules and regulations.* To prescribe rules and regulations to carry out the provisions of this chapter, in accordance with the provisions of subsection (c).

(b) *Commission; duties: national clearinghouse for information; studies, scope, publication, copies to general public at cost.* It shall be the duty of the Commission to serve as a national clearinghouse for information in respect to the administration of elections. In carrying out its duties under this subsection, the Commission shall enter into contracts for the purpose of conducting independent studies of the administration of elections. Such studies shall include, but shall not be limited to, studies of—

(1) the method of selection of, and the type of duties assigned to, officials and personnel working on boards of elections;

(2) practices relating to the registration of voters; and

(3) voting and counting methods.

Studies made under this subsection shall be published by the Commission and copies thereof shall be made available to the general public upon the payment of the cost thereof.

(c) *Review of regulations.*

(1) The Commission, before prescribing any rule or regulation under this section, shall transmit a statement with respect to such rule or regulation to the Senate or the House of Representatives, as the case may be, in accordance with the provisions of this subsection. Such statement shall set forth the proposed rule or regulation and shall contain a detailed explanation and justification of such rule or regulation.

(2) If the appropriate body of the Congress which receives a statement from the Commission under this subsection does not, through appropriate action, disapprove the proposed rule or regulation set forth in such statement no later than 30 legislative days after receipt of such statement, then the Commission may prescribe such rule or regulation. In the case of any rule or regulation proposed to deal with reports or statements required to be filed under this title by a candidate for the office of President of the United States, and by political committees supporting such a candidate both the Senate and the House of Representatives shall have the power to disapprove such proposed rule or regulation. The Commission may not prescribe any rule or regulation which is disapproved under this paragraph.

(3) If the Commission proposes to prescribe any rule or regulation dealing with reports or statements required to be filed under this title by a candidate for the office of Senator, and by political committees supporting such candidate, it shall transmit such statement to the Senate. If the Commission proposes to prescribe any rule or regulation dealing with reports or statements required to be filed under this title by a candidate for the office of Representative, Delegate, or Resident Commissioner, and by political committees supporting such candidate, it shall transmit such statement to the House of Representatives. If the Commission proposes to prescribe any rule or regulation dealing with reports or statements required to be filed under this title by a candidate for the office of President of the United States, and by political committees supporting such candidate it shall transmit such statement to the House of Representatives and the Senate.

(4) For purposes of this subsection, the term "legislative days" does not include, with respect to statements transmitted to the Senate, any calendar day on which the Senate is not in session, and with respect to statements transmitted to the House of Representatives, any calendar day on which the House of Representatives is not in session, and with respect to statements transmitted to both such bodies, any calendar day on which both Houses of the Congress are not in session.

(d) *Rules and regulations; congressional cooperation.*

(1) The Commission shall prescribe suitable rules and regulations to carry out the provisions of this title, including such rules and regulations as may be necessary to require that—

(A) reports and statements required to be filed under this title by a candidate for the office of Representative in, or Delegate or Resident Commissioner to, the Congress of the United States, and by political committees supporting such candidate, shall be received by the Clerk of the House of Representatives as custodian for the Commission;

(B) reports and statements required to be filed under this title by a candidate for the office of Senator, and by political committees supporting such candidate, shall be received by the Secretary of the Senate as custodian for the Commission; and

(C) the Clerk of the House of Representatives and the Secretary of the Senate, as custodians for the Commission, each shall make the reports and statements received by him

available for public inspection and copying in accordance with paragraph (4) of subsection (a), and preserve such reports and statements in accordance with paragraph (5) of subsection (a).

(2) It shall be the duty of the Clerk of the House of Representatives and the Secretary of the Senate to cooperate with the Commission in carrying out its duties under this Act and to furnish such services and facilities as may be required in accordance with this section.

§ 439. Statements filed with State officers

(a) "*Appropriate State*" *defined.* A copy of each statement required to be filed with the Commission by this chapter shall be filed with the Secretary of State (or, if there is no office of Secretary of State, the equivalent State officer) of the appropriate State. For purposes of this subsection, the term "appropriate State" means—

(1) for reports relating to expenditures and contributions in connection with the campaign for nomination for election, or election, of a candidate to the office of President or Vice President of the United States, each State in which an expenditure is made by him or on his behalf, and

(2) for reports relating to expenditures and contributions in connection with the campaign for nomination for election, or election, of a candidate to the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States, the State in which he seeks election.

(b) *Duties of State officers.* It shall be the duty of the Secretary of State, or the equivalent State officer, under subsection (a) of this section—

(1) to receive and maintain in an orderly manner all reports and statements required by this chapter to be filed with him;

(2) to preserve such reports and statements for a period of 10 years from date of receipt, except that reports and statements relating solely to candidates for the House of Representatives shall be preserved for only 5 years from the date of receipt;

(3) to make the reports and statements filed with him available for public inspection and copying during regular office hours, commencing as soon as practicable but not later than the end of the day during which it was received, and to permit copying of any such report or statement by hand or by duplicating machine, requested by any person, at the expense of such person; and

(4) to compile and maintain a current list of all statements or parts of statements pertaining to each candidate.

§ 439a. Use of contributed amounts for certain purposes

Amounts received by a candidate as contributions that are in excess of any amount necessary to defray his expenditures, and any other amounts contributed to an individual for the purpose of supporting his activities as a holder of Federal office, may be used by such candidate or individual, as the case may be, to defray any ordinary and necessary expenses incurred by him in connection with his duties as a holder of Federal office, may be contributed by him to any organization described in section 170(c) of Title 26 of the U.S. Code, or may be used for any other lawful purpose. To the extent any such

contribution, amount contributed, or expenditure thereof is not otherwise required to be disclosed under the provisions of this title, such contribution, amount contributed, or expenditure shall be fully disclosed in accordance with rules promulgated by the Commission. The Commission is authorized to prescribe such rules as may be necessary to carry out the provisions of this section.

§ 439b. Prohibition of franked solicitations

No Senator, Representative, Resident Commissioner, or Delegate shall make any solicitations of funds by a mailing under the frank under section 3210 of Title 39, United States Code.

§ 439c. Authorization of appropriations

There are authorized to be appropriated to the Commission for the purpose of carrying out its functions under this Act, and under chapters 95 and 96 of Title 26 of the United States Code, not to exceed $5 million for the fiscal year ending June 30, 1975.

§ 441.[4] Penalties for violations

(a) Any person who violates any of the provisions of this chapter shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

(b) In case of any conviction under this chapter, where the punishment inflicted does not include imprisonment, such conviction shall be deemed a misdemeanor conviction only.

§ 442. Authority to procure technical support and other services and incur travel expenses; payment of such expenses

For the purpose of carrying out his duties under the Federal Election Campaign Act of 1971 [as amended], the Secretary of the Senate is authorized, from and after July 1, 1972—

(1) to procure technical support services,

(2) to procure the temporary or intermittent services of individual technicans, experts, or consultants, or organizations thereof, in the same manner and under the same conditions, to the extent applicable, as a standing committee of the Senate may procure such services under section 72a(i) of this title,

(3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency, and

(4) to incur official expenses.

Payments to carry out the provisions of this paragraph shall be made from funds included in the appropriation "Miscellaneous Items" under the heading "Contingent Expenses of the Senate" upon vouchers approved by the Secretary of the Senate. All sums received by the Secretary under authority of the Federal Election Campaign Act of 1971 [as amended] shall be covered into the Treasury as miscellaneous receipts.

§ 451. Extension of credit by regulated industries; regulations

The Civil Aeronautics Board, the Federal Communications Commission, and the Interstate Commerce Commission shall each promulgate, within 90 days after February 7, 1972, its own regulations with respect to the extension of credit, without security, by any person regulated by such Board or Commission to any candidate for Federal office, or to any person on behalf of such a candidate, for goods furnished or services rendered in connection with the campaign of such candidate for nomination for election, or election, to such office.

[4] Sec. 440 was stricken from the United States Code by P.L. 93-443. Its provisions are now governed by 18 U.S.C. § 614.

§ 452. Prohibition against use of certain Federal funds for election activities; definitions

No part of any funds appropriated to carry out the Economic Opportunity Act of 1964 shall be used to finance, directly or indirectly, any activity designed to influence the outcome of any election to Federal office, or any voter registration activity, or to pay the salary of any officer or employee of the Office of Economic Opportunity who, in his official capacity as such an officer or employee, engages in any such activity.

§ 453. Effect on State law

The provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office.

§ 454. Partial invalidity

If any provision of this title, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the title and the application of such provision to other persons and circumstances shall not be affected thereby.

§ 455. Period of limitations

(a) No person shall be prosecuted, tried, or punished for any violation of title III of this Act or of section 608, 610, 611, 613, 614, 615, 616, or 617 of Title 18, United States Code, unless the indictment is found or the information is instituted within 3 years after the date of the violation.

(b) Notwithstanding any other provision of law—

(1) the period of limitations referred to in subsection (a) shall apply with respect to violations referred to in such subsection committed before, on, or after the effective date of this section; and

(2) no criminal proceeding shall be instituted against any person for any act or omission which was a violation of any provision of title III of this Act, or section 608, 610, 611, or 613 of Title 18, United States Code, as in effect on December 31, 1974, if such act or omission does not constitute a violation of any such provision, as amended by the Federal Election Campaign Act Amendments of 1974.

Nothing in this subsection shall affect any proceeding pending in any court of the United States on the effective date of this section.

§ 456. Additional enforcement authority

(a) In any case in which the Commission, after notice and opportunity for a hearing on the record in accordance with section 554 of Title 5, United States Code, makes a finding that a person who, while a candidate for Federal office, failed to file a report

required by title III of this Act, and such finding is made before the expiration of the time within which the failure to file such report may be prosecuted as a violation of such title III, such person shall be disqualified from becoming a candidate in any future election for Federal office for a period of time beginning on the date of such finding and ending one year after the expiration of the term of the Federal office for which such person was a candidate.

(b) Any finding by the Commission under subsection (a) shall be subject to judicial review in accordance with the provisions of chapter 7 of Title 5, United States Code.

TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES

CHAPTER 15—POLITICAL ACTIVITY OF CERTAIN STATE AND LOCAL EMPLOYEES

§ 1501. Definitions

For the purpose of this chapter—

(1) "State" means a State or territory or possession of the United States;

(2) "State or local agency" means the executive branch of a State, municipality, or other political subdivision of a State, or an agency or department thereof;

(3) "Federal agency" means an executive agency or other agency of the United States, but does not include a member bank of the Federal Reserve System; and

(4) "State or local officer or employee" means an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency, but does not include—

(A) an individual who exercises no functions in connection with that activity; or

(B) an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.

§ 1502. Influencing elections; taking part in political campaigns; prohibitions; exceptions

(a) A State or local officer or employee may not—

(1) use his official authority or influence for the purpose of interferring with or affecting the result of an election or a nomination for office;

(2) directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or

(3) be a candidate for elective office.

(b) A State or local officer or employee retains the right to vote as he chooses and to express his opinions on political subjects and candidates.

(c) Subsection (a)(3) of this section does not apply to—

(1) the Governor or Lieutenant Governor of a State or an individual authorized by law to act as Governor;

(2) the mayor of a city;

(3) a duly elected head of an executive department of a State or municipality who is not classified under a State or municipal merit or civil-service system; or

(4) an individual holding elective office.

§ 1503. Nonpartisan candidacies permitted

Section 1502(a)(3) of this title does not prohibit any State or local officer or employee from being a candidate in any election if none of the candidates is to be nominated or elected at such election as representing a party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected.

§ 1504. Investigations; notice of hearing

When a Federal agency charged with the duty of making a loan or grant of funds of the United States for use in an activity by a State or local officer or employee has reason to believe that the officer or employee has violated section 1502 of this title, it shall report the matter to the Civil Service Commission. On receipt of the report, or on receipt of other information which seems to the Commission to warrant an investigation, the Commission shall—

(1) fix a time and place for a hearing; and

(2) send, by registered or certified mail, to the officer or employee charged with the violation and to the State or local agency employing him a notice setting forth a summary of the alleged violation and giving the time and place of the hearing.

The hearing may not be held earlier than 10 days after the mailing of the notice.

§ 1505. Hearings; adjudications; notice of determinations

Either the State or local officer or employee or the State or local agency employing him, or both, are entitled to appear with counsel at the hearing under section 1504 of this title, and be heard. After this hearing, the Civil Service Commission shall—

(1) determine whether a violation of section 1502 of this title has occurred;

(2) determine whether the violation warrants the removal of the officer or employee from his office or employment; and

(3) notify the officer or employee and the agency of the determination by registered or certified mail.

§ 1506. Orders; withholding loans or grants; limitations

(a) When the Civil Service Commission finds—

(1) that a State or local officer or employee has not been removed from his office or employment within 30 days after notice of a determination by the Commission that he has violated section 1502 of this title and that the violation warrants removal; or

(2) that the State or local officer or employee has been removed and has been appointed within 18 months after his removal to an office or employment in the same State in a State or local agency which does not receive loans or grants from a Federal agency;

the Commission shall make and certify to the appropriate Federal agency an order requiring that agency to withhold from its loans or grants to the State or local agency to which notice was given an amount

equal to 2 years' pay at the rate the officer or employee was receiving at the time of the violation. When the State or local agency to which appointment within 18 months after removal has been made is one that receives loans or grants from a Federal agency, the Commission order shall direct that the withholding be made from that State or local agency.

(b) Notice of the order shall be sent by registered or certified mail to the State or local agency from which the amount is ordered to be withheld. After the order becomes final, the Federal agency to which the order is certified shall withhold the amount in accordance with the terms of the order. Except as provided by section 1508 of this title, a determination of order of the Commission becomes final at the end of 30 days after mailing the notice of the determination or order.

(c) The Commission may not require an amount to be withheld from a loan or grant pledged by a State or local agency as security for its bonds or notes if the withholding of that amount would jeopardize the payment of the principal or interest on the bonds or notes.

§ 1507. Subpenas and depositions

(a) The Civil Service Commission may require by subpena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter before it as a result of this chapter. Any member of the Commission may sign subpenas, and members of the Commission and its examiners when authorized by the Commission may administer oaths, examine witnesses, and receive evidence. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States at the designated place of hearing. In case of disobedience to a subpena, the Commission may invoke the aid of a court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. In case of contumacy or refusal to obey a subpena issued to a person, the U.S. district court within whose jurisdiction the inquiry is carried on may issue an order requiring him to appear before the Commission, or to produce documentary evidence if so ordered, or to give evidence concerning the matter in question; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(b) The Commission may order testimony to be taken by deposition at any stage of a proceeding or investigation before it as a result of this chapter. Depositions may be taken before an individual designated by the Commission and having the power to administer oaths. Testimony shall be reduced to writing by the individual taking the deposition, or under his direction, and shall be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence before the Commission as provided by this section.

(c) A person may not be excused from attending and testifying or from producing documentary evidence or in obedience to a subpena on the ground that the testimony or evidence, documentary or otherwise required of him may tend to incriminate him or subject him to a district court for the district in which the State or local officer or thing concerning which he is compelled to testify, or produce evidence, documentary or otherwise, before the Commission in obedience to a

subpena issued by it. A person so testifying is not exempt from prosecution and punishment for perjury committed in so testifying.

§ 1508. Judicial review

A party aggrieved by a determination or order of the Civil Service Commission under section 1504, 1505, or 1506 of this title may, within 30 days after the mailing of notice of the determination or order, institute proceedings for review thereof by filing a petition in the U.S. district court for the district in which the State or local officer or employee resides. The institution of the proceedings does not operate as a stay of the determination or order unless—

(1) the court specifically orders a stay; and

(2) the officer or employee is suspended from his office or employment while the proceedings are pending.

A copy of the petition shall immediately be served on the Commission, and thereupon the Commission shall certify and file in the court a transcript of the record on which the determination or order was made. The court shall review the entire record including questions of fact and questions of law. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that the additional evidence may materially affect the result of the proceedings and that there were reasonable grounds for failure to adduce this evidence in the hearing before the Commission, the court may direct that the additional evidence be taken before the Commission in the manner and on the terms and conditions fixed by the court. The Commission may modify its findings of fact or its determination or order in view of the additional evidence and shall file with the court the modified findings, determination, or order; or the modified findings of fact, if supported by substantial evidence, are conclusive. The court shall affirm the determination or order, or the modified determination or order, if the court determines that it is in accordance with law. If the court determines that the determination or order, or the modified determination or order, is not in accordance with law, the court shall remand the proceeding to the Commission with directions either to make a determination or order determined by the court to be lawful or to take such further proceedings as, in the opinion of the court, the law requires. The judgment and decree of the court are final, subject to review by the appropriate U.S. court of appeals as in other cases, and the judgment and decree of the court of appeals are final, subject to review by the Supreme Court of the United States on certiorari or certification as provided by section 1254 of Title 28. If a provision of this section is held to be invalid as applied to a party by a determination or order of the Commission, the determination or order becomes final and effective as to that party as if the provision had not been enacted.

TITLE 18. CRIMES AND CRIMINAL PROCEDURE

Chapter 29—Elections and Political Activities

§ 591. Definitions [1]

Except as otherwise specifically provided, when used in this section and in sections 597, 599, 600, 602, 608, 610, 611, 614, 615, and 617 of this title—

(a) "election" means—

(1) a general, special, primary, or runoff election;

(2) a convention or caucus of a political party held to nominate a candidate;

(3) a primary election held for the selection of delegates to a national nominating convention of a political party; or

(4) a primary election held for the expression of a preference for the nomination of persons for election to the office of President;

(b) a "candidate" means an individual who seeks nomination for election, or election, to Federal office, whether or not such individual is elected, and, for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, to Federal office, if he has—

(1) taken the action necessary under the law of a State to qualify himself for nomination for election, or election; or

(2) received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office;

(c) "Federal office" means the office of President or Vice President of the United States, or Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States;

(d) "political committee" means any committee, club, association, or other group of persons which receives contributions or makes expenditures during a calendar year in an aggregate amount exceeding $1,000;

(e) "contribution"—

(1) means a gift, subscription, loan, advance, or deposit of money or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business, which shall be considered a loan by each endorser or guarantor, in that proportion of the unpaid bal-

[1] Effect on State law: The provisions of chapter 29 of Title 18, United States Code, relating to elections and political activities, supersede and preempt any provision of State law with respect to election to Federal office.

The terms "election," "Federal office," and "State," as used in the preceding sentence of this footnote, have the meanings given them by section 591 of Title 18, United States Code.

ance thereof that each endorser or guarantor bears to the total number of endorsers or guarantors), made for the purpose of influencing the nomination for election, or election, of any person to Federal office or for the purpose of influencing the results of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President of the United States;

(2) means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for such purposes;

(3) means funds received by a political committee which are transferred to such committee from another political committee or other source;

(4) means the payment, by any person other than a candidate or a political committee, of compensation for the personal services of another person which are rendered to such candidate or political committee without charge for any such purpose; but

(5) does not include—

(A) the value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee;

(B) the use of real or personal property and the cost of invitations, food, and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual's residential premises for candidate-related activities;

(C) the sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if such charge for use in a candidate's campaign is at least equal to the cost of such food or beverage to the vendor;

(D) any unreimbursed payment for travel expenses made by an individual who on his own behalf volunteers his personal services to a candidate; or

(E) the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot, or other printed listing, of three or more candidates for any public office for which an election is held in the State in which such committee is organized, except that this clause shall not apply in the case of costs incurred by such committee with respect to a display of any such listing made on broadcasting stations, or in newspapers, magazines or other similar types of general public political advertising;

to the extent that the cumulative value of activities by any person on behalf of any candidate under each of clauses (B), (C), and (D) does not exceed $500 with respect to any election;

(f) "expenditure"—

(1) means a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business), made for the purpose of influencing the nomination for election, or election, of any person to Federal office or for the purpose of influencing the results of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President of the United States;

(2) means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure; and

(3) means the transfer of funds by a political committee to another political committee; but

(4) does not include—

(A) any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate;

(B) nonpartisan activity designed to encourage individuals to register to vote or to vote;

(C) any communication by any membership organization or corporation to its members or stockholders, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any person to Federal office;

(D) the use of real or personal property and the cost of invitations, food, and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual's residential premises for candidate-related activities;

(E) any unreimbursed payment for travel expenses made by an individual who on his own behalf volunteers his personal services to a candidate;

(F) any communication by any person which is not made for the purpose of influencing the nomination for election, or election, of any person to Federal office;

(G) the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot, or other printed listing, of three or more candidates for any public office for which an election is held in the State in which such committee is organized, except that this clause shall not apply in the case of costs incurred by such committee with respect to a display of any such listing made on broadcasting stations, or in newspapers,

magazines or other similar types of general public political advertising;

(H) any costs incurred by a candidate in connection with the solicitation of contributions by such candidate, except that this clause shall not apply with respect to costs incurred by a candidate in excess of an amount equal to 20 percent of the expenditure limitation applicable to such candidate under section 608(c) of this title; or

(I) any costs incurred by a political committee (as such term is defined by section 608(b)(2) of this title) with respect to the solicitation of contributions to such political committee or to any general political fund controlled by such political committee, except that this clause shall not apply to exempt costs incurred with respect to the solicitation of contributions to any such political committee made through broadcasting stations, newspapers, magazines, outdoor advertising facilities, and other similar types of general public political advertising;

to the extent that the cumulative value of activities by any individual on behalf of any candidate under each of clauses (D) or (E) does not exceed $500 with respect to any election;

(g) "person" and "whoever" mean an individual, partnership, committee, association, corporation, or any other organization or group of persons;

(h) "State" means each State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;

(i) "political party" means any association, committee, or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee, or organization;

(j) "State committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the Federal Election Commission;

(k) "national committee" means the organization which, by virtue of the bylaws of the political party, is responsible for the day-to-day operation of such political party at the national level, as determined by the Federal Election Commission established under section 437c(a) of Title 2, United States Code; and

(l) "principal campaign committee" means the principal campaign committee designated by a candidate under section 432(f)(1) of Title 2, United States Code.

§ 592. Troops at polls

Whoever, being an officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held, unless such force be necessary to repel armed enemies of the United States, shall be fined not more than $5,000 or imprisoned not more than 5 years, or

both; and be disqualified from holding any office of honor, profit, or trust under the United States.

This section shall not prevent any officer or member of the Armed Forces of the United States from exercising the right of suffrage in any election district to which he may belong, if otherwise qualified according to the laws of the State in which he offers to vote.

§ 593. Interference by Armed Forces

Whoever, being an officer or member of the Armed Forces of the United States, prescribes or fixes or attempts to prescribe or fix, whether by proclamation, order or otherwise, the qualifications of voters at any election in any State;

Whoever, being such officer or member, prevents or attempts to prevent by force, threat, intimidation, advice or otherwise any qualified voter of any State from fully exercising the right of suffrage at any general or special election;

Whoever, being such officer or member, orders or compels or attempts to compel any election officer in any State to receive a vote from a person not legally qualified to vote;

Whoever, being such officer or member, imposes or attempts to impose any regulations for conducting any general or special election in a State, different from those prescribed by law; or

Whoever, being such officer or member, interferes in any manner with an election officer's discharge of his duties, shall be fined not more than $5,000 or imprisoned not more than 5 years, or both; and disqualified from holding any office of honor, profit or trust under the United States.

This section shall not prevent any officer or member of the Armed Forces from exercising the right of suffrage in any district to which he may belong, if otherwise qualified according to the laws of the State of such district.

§ 594. Intimidation of voters

Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purposes of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, at any election held solely or in part for the purpose of electing such candidate, shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

§ 595. Interference by administrative employees of Federal, State, or Territorial Governments

Whoever, being a person employed in any administrative position by the United States, or by any department or agency thereof, or by the District of Columbia or any agency or instrumentality thereof, or by any State, Territory, or Possession of the United States, or any political subdivision, municipality, or agency thereof, or agency of such political subdivision or municipality (including any corporation owned or controlled by any State, Territory, or Possession of the United States or by any such political subdivision, municipality, or

agency), in connection with any activity which is financed in whole or in part by loans or grants made by the United States, or any department or agency thereof, uses his official authority for the purpose of interfering with, or affecting, the nomination or the election of any candidate for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

This section shall not prohibit or make unlawful any act by any officer or employee of any educational or research institution, establishment, agency, or system which is supported in whole or in part by any state or political subdivision thereof, or by the District of Columbia or by any Territory or Possession of the United States; or by any recognized religious, philanthropic or cultural organization.

§ 596. Polling Armed Forces

Whoever, within or without the Armed Forces of the United States, polls any member of such forces, either within or without the United States, either before or after he executes any ballot under any Federal or State law, with reference to his choice of or his vote for any candidate, or states, publishes, or releases any result of any purported poll taken from or among the members of the Armed Forces of the United States or including within it the statement of choice for such candidate or of such votes cast by any member of the Armed Forces of the United States, shall be fined not more than $1,000 or imprisoned for not more than 1 year, or both.

The word "poll" means any request for information, verbal or written, which by its language or form of expression requires or implies the necessity of an answer, where the request is made with the intent of compiling the result of the answers obtained, either for the personal use of the person making the request, or for the purpose of reporting the same to any other person, persons, political party, unincorporated association or corporation, or for the purpose of publishing the same orally, by radio, or in written or printed form.

§ 597. Expenditures to influence voting

Whoever makes or offers to make an expenditure to any person, either to vote or withhold his vote, or to vote for or against any candidate; and

Whoever solicits, accepts, or receives any such expenditure in consideration of his vote or the withholding of his vote, shall be fined not more than $1,000 or imprisoned not more than 1 year, or both; and if the violation was willful, shall be fined not more than $10,000 or imprisoned not more than 2 years, or both.

§ 598. Coercion by means of relief appropriations

Whoever uses any part of any appropriation made by Congress for work relief, relief, or for increasing employment by providing loans and grants for public-works projects, or exercises or administers any authority conferred by any Appropriation Act for the purpose of interfering with, restraining, or coercing any individual in the exercise of his right to vote at any election, shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

§ 599. Promise of appointment by candidate

Whoever, being a candidate, directly or indirectly promises or pledges the appointment, or the use of his influence or support for the appointment of any person to any public or private position or employment, for the purpose of procuring support in his candidacy shall be fined not more than $1,000 or imprisoned not more than 1 year, or both; and if the violation was willful, shall be fined not more than $10,000 or imprisoned not more than 2 years, or both.

§ 600. Promise of employment or other benefit for political activity

Whoever, directly or indirectly, promises any employment, position, compensation, contract, appointment, or other benefit, provided for or made possible in whole or in part by any Act of Congress, or any special consideration in obtaining any such benefit, to any person as consideration, favor, or reward for any political activity or for the support of or opposition to any candidate or any political party in connection with any general or special election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

§ 601. Deprivation of employment or other benefit for political activity

Whoever, except as required by law, directly or indirectly, deprives, attempts to deprive, or threatens to deprive any person of any employment, position, work, compensation, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes, on account of race, creed, color, or any political activity, support of, or opposition to any candidate or any political party in any election, shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

§ 602. Solicitation of political contributions

Whoever, being a Senator or Representative in, or Delegate or Resident Commissioner to, or a candidate for Congress, or individual elected as, Senator, Representative, Delegate, or Resident Commissioner, or an officer or employee of the United States or any department or agency thereof, or a person receiving any salary or compensation for services from money derived from the Treasury of the United States, directly or indirectly solicits, receives, or is in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any other such officer, employee, or person, shall be fined not more than $5,000 or imprisoned not more than 3 years or both.

§ 603. Place of solicitation

Whoever, in any room or building occupied in the discharge of official duties by any person mentioned in section 602 of this title, or in any navy yard, fort, or arsenal, solicits or receives any contribution of moneys or other thing of value for any political purpose, shall be fined not more than $5,000 or imprisoned not more than 3 years, or both.

§ 604. Solicitation from persons on relief

Whoever solicits or receives or is in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose from any person known by him to be entitled to, or receiving compensation, employment, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes, shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

§ 605. Disclosure of names of persons on relief

Whoever, for political purposes, furnishes or discloses any list or names of persons receiving compensation, employment or benefits provided for or made possible by any Act of Congress appropriating, or authorizing the appropriation of funds for work relief or relief purposes, to a political candidate, committee, campaign manager, or to any person for delivery to a political candidate, committee, or campaign manager; and

Whoever receives any such list or names for political purposes, shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

§ 606. Intimidation to secure political contributions

Whoever, being one of the officers or employees of the United States mentioned in section 602 of this title, discharges, or promotes, or degrades, or in any manner changes the official rank or compensation of any other officer or employee, or promises or threatens so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose, shall be fined not more than $5,000 or imprisoned not more than 3 years, or both.

§ 607. Making political contributions

Whoever, being an officer, clerk, or other person in the service of the United States or any department or agency thereof, directly or indirectly gives or hands over to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of or Delegate to Congress, or Resident Commissioner, any money or other valuable thing on account of or to be applied to the promotion of any political object, shall be fined not more than $5,000 or imprisoned not more than 3 years, or both.

§ 608. Limitations on contributions and expenditures [2]

(a) *Personal funds of candidate and family.*

(1) No candidate may make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaigns during any calendar year for nomination for election, or for election, to Federal office in excess of, in the aggregate—

[2] Notwithstanding section 608(a)(1) of Title 18, United States Code, relating to limitations on expenditures from personal funds, any individual may satisfy or discharge, out of his personal funds or the personal funds of his immediate family, any debt or obligation which is outstanding on the date of the enactment of this Act and which was incurred by him or on his behalf by any political committee in connection with any campaign ending before the close of December 31, 1972, for election to Federal office.

For purposes of the preceding paragraph of this footnote—(1) the terms "election", "Federal office", and "political committee" have the meanings given them by section 591 of Title 18, United States Code; and (2) the term "immediate family" has the meaning given it by section 608(a)(2) of Title 18, United States Code.

(A) $50,000, in the case of a candidate for the office of President or Vice President of the United States;

(B) $35,000, in the case of a candidate for the office of Senator or for the office of Representative from a State which is entitled to only one Representative; or

(C) $25,000, in the case of a candidate for the office of Representative, or Delegate or Resident Commissioner, in any other State.

For purposes of this paragraph, any expenditure made in a year other than the calendar year in which the election is held with respect to which such expenditure was made, is considered to be made during the calendar year in which such election is held.

(2) For purposes of this subsection, "immediate family" means a candidate's spouse, and any child, parent, grandparent, brother, or sister of the candidate, and the spouses of such persons.

(3) No candidate or his immediate family may make loans or advances from their personal funds in connection with his campaign for nomination for election, or for election, to Federal office unless such loan or advance is evidenced by a written instrument fully disclosing the terms and conditions of such loan or advance.

(4) For purposes of this subsection, any such loan or advance shall be included in computing the total amount of such expenditures only to the extent of the balance of such loan or advance outstanding and unpaid.

(b) *Contributions by persons and committees.*

(1) Except as otherwise provided by paragraphs (2) and (3), no person shall make contributions to any candidate with respect to any election for Federal office which, in the aggregate, exceed $1,000.

(2) No political committee (other than a principal campaign committee) shall make contributions to any candidate with respect to any election for Federal office which, in the aggregate, exceed $5,000. Contributions by the national committee of a political party serving as the principal campaign committee of a candidate for the office of President of the United States shall not exceed the limitation imposed by the preceding sentence with respect to any other candidate for Federal office. For purposes of this paragraph, the term "political committee" means an organization registered as a political committee under section 433, Title 2, United States Code, for a period of not less than 6 months which has received contributions from more than 50 persons and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office.

(3) No individual shall make contributions aggregating more than $[illegible]000 in any calendar year. For purposes of this paragraph, a contribution made in a year other than the calendar year in which the election is held with respect to which such contribution is made, is considered to be made during the calendar year in which such election is held.

(4) For purposes of this subsection—

(A) contributions to a named candidate made to any political committee authorized by such candidate, in writing,

to accept contributions on his behalf shall be considered to be contributions made to such candidate; and

(B) contributions made to or for the benefit of any candidate nominated by a political party for election to the office of Vice President of the United States shall be considered to be contributions made to or for the benefit of the candidate of such party for election to the office of President of the United States.

(5) The limitations imposed by paragraphs (1) and (2) of this subsection shall apply separately with respect to each election, except that all elections held in any calendar year for the office of President of the United States (except a general election for such office) shall be considered to be one election.

(6) For purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient.

(c) *Limitations on expenditures.*

(1) No candidate shall make expenditures in excess of—

(A) ten million dollars, in the case of a candidate for nomination for election to the office of President of the United States, except that the aggregate of expenditures under this subparagraph in any one State shall not exceed twice the expenditure limitation applicable in such State to a candidate for nomination for election to the office of Senator, Delegate, or Resident Commissioner, as the case may be;

(B) twenty million dollars, in the case of a candidate for election to the office of President of the United States;

(C) in the case of any campaign for nomination for election by a candidate for the office of Senator or by a candidate for the office of Representative from a State which is entitled to only one Representative, the greater of—

(i) eight cents multiplied by the voting age population of the State (as certified under subsection (g)); or

(ii) one hundred thousand dollars;

(D) in the case of any campaign for election by a candidate for the office of Senator or by a candidate for the office of Representative from a State which is entitled to only one Representative, the greater of—

(i) twelve cents multiplied by the voting age population of the State (as certified under subsection (g)); or

(ii) one hundred fifty thousand dollars;

(E) seventy thousand dollars, in the case of any campaign for nomination for election, or for election, by a candidate for the office of Representative in any other State, Delegate from the District of Columbia, or Resident Commissioner; or

(F) fifteen thousand dollars, in the case of any campaign for nomination for election, or for election, by a candidate for the office of Delegate from Guam or the Virgin Islands.

(2) For purposes of this subsection—

(A) expenditures made by or on behalf of any candidate nominated by a political party for election to the office of Vice President of the United States shall be considered to be expenditures made by or on behalf of the candidate of such party for election to the office of President of the United States; and

(B) an expenditure is made on behalf of a candidate, including a vice presidential candidate, if it is made by—

(i) an authorized committee or any other agent of the candidate for the purposes of making any expenditure; or

(ii) any person authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate, to make the expenditure.

(3) The limitations imposed by subparagraphs (C), (D), (E), and (F) of paragraph (1) of this subsection shall apply separately with respect to each election.

(4) The Commission shall prescribe rules under which any expenditure by a candidate for presidential nomination for use in 2 or more States shall be attributed to such candidate's expenditure limitation in each such State, based on the voting age population in such State which can reasonably be expected to be influenced by such expenditure.

(d) *Adjustment of limitations based on price index.*

(1) At the beginning of each calendar year (commencing in 1976), as there become available necessary data from the Bureau of Labor Statistics of the Department of Labor, the Secretary of Labor shall certify to the Commission and publish in the Federal Register the per centum difference between the price index for the 12 months preceding the beginning of such calendar year and the price index for the base period. Each limitation established by subsection (c) and subsection (f) shall be increased by such per centum difference. Each amount so increased shall be the amount in effect for such calendar year.

(2) For purposes of paragraph (1)—

(A) the term "price index" means the average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics; and

(B) the term "base period" means the calendar year 1974.

(e) *Expenditures relative to clearly identified candidate.*

(1) No person may make any expenditure (other than an expenditure made by or on behalf of a candidate within the meaning of subsection (c)(2)(B) relative to a clearly indentified candidate during a calendar year which, when added to all other expenditures made by such person during the year advocating the election or defeat of such candidate, exceeds $1,000.

(2) For purposes of paragraph (1)—

(A) "clearly identified" means—

(i) the candidate's name appears;

(ii) a photograph or drawing of the candidate appears; or

(iii) the identity of the candidate is apparent by unambiguous reference.

(B) "expenditure" does not include any payment made or incurred by a corporation or a labor organization which, under the provisions of the last paragraph of section 610 of this title, would not constitute an expenditure by such corporation or labor organization.

(f) *Exceptions for national and State committees.*

(1) Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraphs (2) and (3) of this subsection.

(2) The national committee of a political party may not make any expenditure in connection with the general election campaign of any candidate for President of the United States who is affiliated with such party which exceeds an amount equal to 2 cents multiplied by the voting age population of the United States (as certified under subsection (g)). Any expenditure under this paragraph shall be in addition to any expenditure by a national committee of a political party serving as the principal campaign committee of a candidate for the office of President of the United States.

(3) The national committee of a political party, or a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds—

(A) in the case of a candidate for election to the office of Senator, or of Representative from a State which is entitled to only one Representative, the greater of—

(i) two cents multiplied by the voting age population of the State (as certified under subsection (g)); or

(ii) twenty thousand dollars; and

(B) in the case of a candidate for election to the office of Representative, Delegate, or Resident Commissioner in any other State, $10,000.

(g) *Voting age population estimates.* During the first week of January 1975, and every subsequent year, the Secretary of Commerce shall certify to the Commission and publish in the Federal Register an estimate of the voting age population of the United States, of each State, and of each congressional district as of the first day of July

next preceding the date of certification. The term "voting age population" means resident population, 18 years of age or older.

(h) *Knowing violations.* No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section. No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this section.

(i) *Penalties.* Any person who violates any provision of this section shall be fined not more than $25,000 or imprisoned not more than 1 year, or both.

§ 609. [Repealed]

§ 610. Contributions or expenditures by national banks, corporations or labor organizations

It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.

Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $25,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization as the case may be, and any person who accepts or receives any contribution, in violation of this section, shall be fined not more than $1,000 or imprisoned not more than 1 year, or both; and if the violation was willful, shall be fined not more than $50,000 or imprisoned not more than 2 years or both.

For the purposes of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

As used in this section, the phrase "contribution or expenditure" shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary

course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section; but shall not include communications by a corporation to its stockholders and their families or by a labor organization to its members and their families on any subject; nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families, or by a labor organization aimed at its members and their families; the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization: *Provided*, That it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment, or by monies obtained in any commercial transaction.

§ 611. Contributions by Government contractors

Whoever—

(a) entering into any contract with the United States or any department or agency thereof either for the rendition of personal services or furnishing any material, supplies, or equipment to the United States or any department or agency thereof or for selling any land or building to the United States or any department or agency thereof, if payment for the performance of such contract or payment for such material, supplies, equipment, land, or building to be made in whole or in part from funds appropriated by the Congress, at any time between the commencement of negotiations for and the later of—

(1) the completion of performance under; or

(2) the termination of negotiations for, such contract or furnishing of material, supplies, equipment, land or buildings;

directly or indirectly makes any contribution of money or other thing of value, or promises expressly or impliedly to make any such contribution, to any political party, committee, or candidate for public office or to any person for any political purpose or use; or

(b) knowingly solicits any such contribution from any such person for any such purpose during any such period;

shall be fined not more than $25,000 or imprisoned not more than 5 years, or both.

This section does not prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, any separate segregated fund by any corporation or labor organization for the purpose of influencing the nomination for election, or election, of any person to Federal office, unless the provisions of section 610 of this title prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, such fund.

For purposes of this section, the term "labor organization" has the meaning given it by section 610 of this title.

§ 612. Publication or distribution of political statements

Whoever willfully publishes or distributes or causes to be published or distributed, or for the purpose of publishing or distributing the same, knowingly deposits for mailing or delivery or causes to be deposited for mailing or delivery, or, except in cases of employees of the Postal Service in the official discharge of their duties, knowingly transports or causes to be transported in interstate commerce any card, pamphlet, circular, poster, dodger, advertisement, writing, or other statement relating to or concerning any person who has publicly declared his intention to seek the office of President, or Vice President of the United States, or Senator or Representative in, or Delegate or Resident Commissioner to Congress, in a primary, general, or special election, or convention of a political party, or has caused or permitted his intention to do so to be publicly declared, which does not contain the names of the persons, associations, committees, or corporations responsible for the publication or distribution of the same, and the names of the officers of each such association, committee, or corporation, shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

§ 613. Contributions by foreign nationals

Whoever, being a foreign national, directly or through any other person, knowingly makes any contribution of money or other thing of value, or promises expressly or impliedly to make any such contribution, in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or

Whoever knowingly solicits, accepts, or receives any such contribution from any such foreign national, shall be fined not more than $25,000 or imprisoned not more than 5 years or both.

As used in this section, the term "foreign national" means—

(1) a foreign principal, as such term is defined by section 1(b) of the Foreign Agents Registration Act of 1938 (22 U.S.C. § 611(b)), except that the term "foreign national" shall not include any individual who is a citizen of the United States; or

(2) an individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(20)).

§ 614. Prohibition of contributions in name of another

(a) No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.

(b) Any person who violates this section shall be fined not more than $25,000 or imprisoned not more than 1 year, or both.

§ 615. Limitation on contributions of currency

(a) No person shall make contributions of currency of the United States or currency of any foreign country to or for the benefit of any candidate which, in the aggregate, exceed $100, with respect to any

campaign of such candidate for nomination for election, or for election, to Federal office.

(b) Any person who violates this section shall be fined not more than $25,000 or imprisoned not more than 1 year, or both.

§ 616. Acceptance of excessive honorariums

Whoever, while an elected or appointed officer or employee of any branch of the Federal Government—

(1) accepts any honorarium of more than $1,000 (excluding amounts accepted for actual travel and subsistence expenses) for any appearance, speech, or article; or

(2) accepts honorariums (not prohibited by paragraph (1) of this section) aggregating more than $15,000 in any calendar year;

shall be fined not less than $1,000 nor more than $5,000.

§ 617. Fraudulent misrepresentation of campaign authority

Whoever, being a candidate for Federal office or an employee or agent of such a candidate—

(1) fraudulently misrepresents himself or any committee or organization under his control as speaking or writing or otherwise acting for or on behalf of any other candidate or political party or employee or agent thereof on a matter which is damaging to such other candidate or political party or employee or agent thereof; or

(2) willfully and knowingly participates in or conspires to participate in any plan, scheme, or design to violate paragraph (1);

shall, for each such offense, be fined not more than $25,000 or imprisoned not more than 1 year, or both.

CHAPTER 1, SUBCHAPTER A, PART IV—CREDITS AGAINST TAX

§ 41. Contributions to candidates for public office

(a) *General rule.* In the case of an individual, there shall be allowed, subject to the limitations of subsection (b), as a credit against the tax imposed by this chapter for the taxable year, an amount equal to one-half of all political contributions and all newsletter fund contributions, payment of which is made by the taxpayer within the taxable year.

(b) *Limitations.*

(1) *Maximum credit.* The credit allowed by subsection (a) for a taxable year shall not exceed $25 ($50 in the case of a joint return under section 6013).

(2) *Application with other credits.* The credit allowed by subsection (a) shall not exceed the amount of the tax imposed by this chapter for the taxable year reduced by the sum of the credits allowable under section 33 (relating to foreign tax credit), section 35 (relating to partially tax-exempt interest), section 37 (relating to retirement income), and section 38 (relating to investment in certain depreciable property).

(3) *Verification.* The credit allowed by subsection (a) shall be allowed, with respect to any political contribution or newsletter fund contribution, only if such contribution is verified in such manner as the Secretary [1] or his delegate shall prescribe by regulations.

(c) *Definitions.* For purposes of this section—

(1) *Political contribution.* The term "political contribution" means a contribution or gift of money to—

(A) an individual who is a candidate for nomination or election to any Federal, State, or local elective public office in any primary, general, or special election, for use by such individual to further his candidacy for nomination or election to such office;

(B) any committee, association, or organization (whether or not incorporated) organized and operated exclusively for the purpose of influencing, or attempting to influence, the nomination or election of one or more individuals who are candidates for nomination or election to any Federal, State, or local elective public office, for use by such committee, association, or organization to further the candidacy of such individual or individuals for nomination or election to such office;

(C) the national committee of a national political party;

(D) the State committee of a national political party as designated by the national committee of such party; or

[1] In Title 26, "Secretary" refers to the Secretary of the Treasury.

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(E) a local committee of a national political party as designated by the State committee of such party designated under subparagraph (D).

(2) *Candidate.* The term "candidate" means, with respect to any Federal, State, or local elective public office, an individual who—

(A) publicly announces before the close of the calendar year following the calendar year in which the contribution or gift is made that he is a candidate for nomination or election to such office; and

(B) meets the qualifications prescribed by law to hold such office.

(3) *National political party.* The term "national political party" means—

(A) in the case of contributions made during a taxable year of the taxpayer in which the electors of President and Vice President are chosen, a political party presenting candidates or electors for such offices on the official election ballot of 10 or more States, or

(B) in the case of contributions made during any other taxable year of the taxpayer, a political party which met the qualifications described in subparagraph (A) in the last preceding election of a President and Vice President.

(4) *State and local.* The term "State" means the various States and the District of Columbia; and the term "local" means a political subdivision or part thereof, or two or more political subdivisions or parts thereof, of a State.

(5) *Newsletter fund contribution.* The term "newsletter fund contribution" means a contribution or gift of money to a fund established and maintained by an individual who holds, has been elected to, or is a candidate for nomination or election to, any Federal, State, or local elective public office for use by such individual exclusively for the preparation and circulation of a newsletter.

(d) *Cross references.* For disallowance of credits to estates and trusts, see section 642(a)(3).

CHAPTER 1, SUBCHAPTER B, PART II—ITEMS SPECIFICALLY INCLUDED IN GROSS INCOME

§ 84. Transfer of appreciated property to political organizations [2]

(a) *General rule.* If—

(1) any person transfers property to a political organization, and

(2) the fair market value of such property exceeds its adjusted basis,

then for purposes of this chapter the transferor shall be treated as having sold such property to the political organization on the date of the transfer, and the transferor shall be treated as having realized an amount equal to the fair market value of such property on such date.

[2] This section applies to transfers made after May 7, 1974, in taxable years ending after such date.

In the case of the sale or exchange before August 2, 1973, by an organization described in section 527(e)(1) of this title, of property which such organization acquired by contribution (within the meaning of section 271(b)(2) of this title), no gain or loss shall be recognized by such organization.

(b) *Basis of property.* In the case of a transfer of property to a political organization to which subsection (a) applies, the basis of such property in the hands of the political organization shall be the same as it would be in the hands of the transferor, increased by the amount of gain recognized to the transferor by reason of such transfer.

(c) *Political organization defined.* For purposes of this section, the term "political organization" has the meaning given to such term by section 527(e)(1).

CHAPTER 1, SUBCHAPTER B, PART VII—ADDITIONAL ITEMIZED DEDUCTIONS FOR INDIVIDUALS

§ 218. Contributions to candidates for public office

(a) *Allowance of deduction.*—In the case of an individual, there shall be allowed as a deduction any political contribution (as defined in section 41(c)(1)) or newsletter fund contribution (as defined in section 41(c)(5)) payment of which is made by such individual within the taxable year.

(b) *Limitations.*

(1) *Amount.* The deduction under subsection (a) shall not exceed $100 ($200 in the case of a joint return under section 6013).

(2) *Verification.* The deduction under subsection (a) shall be allowed, with respect to any political contribution or newsletter fund contribution, only if such contribution is verified in such manner as the Secretary or his delegate shall prescribe by regulations.

(c) *Election to take credit in lieu of deduction.* This section shall not apply in the case of any taxpayer who, for the taxable year, elects to take the credit against tax provided by section 41 (relating to credit against tax for contributions to candidates for public office). Such election shall be made in such manner and at such time as the Secretary or his delegate shall prescribe by regulations.

(d) *Cross reference.* For disallowance of deduction to estates and trusts, see section 642(i).

CHAPTER 1, SUBCHAPTER B, PART IX—ITEMS NOT DEDUCTIBLE

§ 271. Debts owed by political parties, etc.

(a) *General rule.* In the case of a taxpayer (other than a bank as defined in section 581) no deduction shall be allowed under section 166 (relating to bad debts) or under section 165(g) (relating to worthlessness of securities) by reason of the worthlessness of any debt owed by a political party.

(b) *Definitions.*

(1) *Political party.* For purposes of subsection (a), the term "political party" means—

(A) a political party;

(B) a national, State, or local committee of a political party; or

(C) a committee, association, or organization which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the election of presidential or vice presidential electors or any individual whose

name is presented for election to any Federal, State, or local elective public office, whether or not such individual is elected.

(2) *Contributions.* For purposes of paragraph (1)(C), the term "contributions" includes a gift, subscription, loan, advance, or deposit, of money, or anything of value, and includes a contract, promise, or agreement to make a contribution, whether or not legally enforceable.

(3) *Expenditures.* For purposes of paragraph (1)(C), the term "expenditures" includes a payment, distribution, loan, advance, deposit, or gift, of money, or anything of value, and includes a contract, promise, or agreement to make an expenditure, whether or not legally enforceable.

§ 276. Certain indirect contributions to political parties

(a) *Disallowance of deduction.* No deduction otherwise allowable under this chapter shall be allowed for any amount paid or incurred for—

(1) advertising in a convention program of a political party, or in any other publication if any part of the proceeds of such publication directly or indirectly inures (or is intended to inure) to or for the use of a political party or a political candidate;

(2) admission to any dinner or program, if any part of the proceeds of such dinner or program directly or indirectly inures (or is intended to inure) to or for the use of a political party or a political candidate; or

(3) admission to an inaugural ball, inaugural gala, inaugural parade, or inaugural concert, or to any similar event which is identified with a political party or a political candidate.

(b) *Definitions.* For purposes of this section—

(1) *Political party.* The term "political party" means—

(A) a political party;

(B) a National, State, or local committee of a political party; or

(C) a committee, association, or organization, whether incorporated or not, which directly or indirectly accepts contributions (as defined in section 271(b)(2)) or make expenditures (as defined in section 271(b)(3)) for the purpose of influencing or attempting to influence the selection, nomination, or election of any individual to any Federal, State, or local elective public office, or the election of presidential and vice presidential electors, whether or not such individual or electors are selected, nominated, or elected.

(2) *Proceeds inuring to or for the use of political candidates.* Proceeds shall be treated as inuring to or for the use of a political candidate only if—

(A) such proceeds may be used directly or indirectly for the purpose of furthering his candidacy for selection, nomination, or election to any elective public office; and

(B) such proceeds are not received by such candidate in the ordinary course of a trade or business (other than the trade or business of holding elective public office).

(c) *Cross reference.* For disallowance of certain entertainment, etc., expenses, see section 274.

§ 527. Political organizations

(a) *General rule.* A political organization shall be subject to taxation under this subtitle only to the extent provided in this section. A political organization shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(b) *Tax imposed.*

(1) *In general.* A tax is hereby imposed for each taxable year on the political organization taxable income of every political organization. Such tax shall consist of a normal tax and surtax computed as provided in section 11 as though the political organization were a corporation and as though the political organization taxable income were the taxable income referred to in section 11. For purposes of this subsection, the surtax exemption provided by section 11(d) shall not be allowed.

(2) *Alternative tax in case of capital gains.* If for any taxable year any political organization has a net section 1201 gain, then, in lieu of the tax imposed by paragraph (1), there is hereby imposed a tax (if such a tax is less than the tax imposed by paragraph (1)) which shall consist of the sum of—

(A) a partial tax, computed as provided by paragraph (1), on the political organization taxable income determined by reducing such income by the amount of such gain, and

(B) an amount determined as provided in section 1201(a) on such gain.

(c) *Political organization taxable income defined.*

(1) *Taxable income defined.* For purposes of this section, the political organization taxable income of any organization for any taxable year is an amount equal to the excess (if any) of—

(A) the gross income for the taxable year (excluding any exempt function income), over

(B) the deductions allowed by this chapter which are directly connected with the production of the gross income (excluding exempt function income), computed with the modifications provided in paragraph (2).

(2) *Modifications.* For purposes of this subsection—

(A) there shall be allowed a specific deduction of $100,

(B) no net operating loss deductions shall be allowed under section 172, and

(C) no deduction shall be allowed under part VII of subchapter B (relating to special deductions for corporations).

(3) *Exempt function income.* For purposes of this subsection, the term "exempt function income" means any amount received as—

(A) a contribution of money or other property,

(B) membership dues, a membership fee or assessment from a member of the political organization, or

(C) proceeds from a political fundraising or entertainment event, or proceeds from the sale of political campaign materials, which are not received in the ordinary course of any trade or business,

to the extent such amount is segregated for use only for the exempt function of the political organization.

(d) *Certain uses not treated as income to candidate.* For purposes of this title, if any political organization—

(1) contributes any amount to or for the use of any political organization which is treated as exempt from tax under subsection (a) of this section,

(2) contributes any amount to or for the use of any organization described in paragraph (1) or (2) of section 509(a) which is exempt from tax under section 501(a), or

(3) deposits any amount in the general fund of the Treasury or in the general fund of any State or local government,

such amount shall be treated as an amount not diverted for the personal use of the candidate or any other person. No deduction shall be allowed under this title for the contribution or deposit of any amount described in the preceding sentence.

(e) *Other definitions.* For purposes of this section—

(1) *Political organization.* The term "political organization" means a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.

(2) *Exempt function.* The term "exempt function" means the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of presidential or vice-presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed.

(3) *Contributions.* The term "contributions" has the meaning given to such term by section 271(b)(2).

(4) *Expenditures.* The term "expenditures" has the meaning given to such term by section 271(b)(3).

(f) *Exempt organization which is not political organization must include certain amounts in gross income.*

(1) *In general.* If an organization described in section 501(c) which is exempt from tax under section 501(a) expends any amount during the taxable year directly (or through another organization) for an exempt function (within the meaning of subsection (e)(2)), then, not withstanding any other provision of law, there shall be included in the gross income of such organization for the taxable year, and shall be subject to tax under subsection (b) as if it constituted political organization taxable income, an amount equal to the lesser of—

(A) the net investment income of such organization for the taxable year, or

(B) the aggregate amount so expended during the taxable year for such an exempt function.

(2) *Net investment income.* For purposes of this subsection, the term "net investment income" means the excess of—

(A) the gross amount of income from interest, dividends, rents, and royalties, plus the excess (if any) of gains from

the sale or exchange of assets over the losses from the sale or exchange of assets, over

(B) the deductions allowed by this chapter which are directly connected with the production of the income referred to in subparagraph (A).

For purposes of the preceding sentence, there shall not be taken into account items taken into account for purposes of the tax imposed by section 511 (relating to tax on unrelated business income).

(3) *Certain separate segregated funds.* For purposes of this subsection and subsection (e)(1), a separate segregated fund (within the meaning of section 610 of Title 18 or of any similar State statute, or within the meaning of any State statute which permits the segregation of dues moneys for exempt functions (within the meaning of subsection (e)(2))) which is maintained by an organization described in section 501(c) which is exempt from tax under section 501(a) shall be treated as a separate organization.

(g) *Treatment of newsletter funds.*

(1) *In general.* For purposes of this section, a fund established and maintained by an individual who holds, has been elected to, or is a candidate (within the meaning of section 41(c)(2)) for nomination or election to, any Federal, State, or local elective public office for use by such individual exclusively for the preparation and circulation of such individual's newsletter shall, except as provided in paragraph (2), be treated as if such fund constituted a political organization.

(2) *Additional modifications.* In the case of any fund described in paragraph (1)—

(A) the exempt function shall be only the preparation and circulation of the newsletter, and

(B) the specific deduction provided by subsection (c)(2)(A) shall not be allowed.

Chapter 12—Gift Tax

§ 2501. Imposition of tax

(a) *Taxable transfers.*

(1) *General rule.* For the first calendar quarter of calendar year 1971 and each calendar quarter thereafter a tax, computed as provided in section 2502, is hereby imposed on the transfer of property by gift during such calendar quarter by any individual, resident or nonresident.

* * * * * * *

(5) *Transfers to political organizations.* Paragraph (1) shall not apply to the transfer of money or other property to a political organization (within the meaning of section 527(e)(1)) for the use of such organization.[8]

* * * * * * *

[8] This paragraph applies to transfers made after May 7, 1974.

§ 6012. Persons required to make returns of income

(a) *General rule.* Returns with respect to income taxes under subtitle A shall be made by the following:

(1)(A) Every individual having for the taxable year a gross income of $750 or more, except that a return shall not be required of an individual (other than an individual referred to in section 142(b))—

(i) who is not married (determined by applying section 143(a)) and for the taxable year has a gross income of less than $2,050; or

(ii) who is entitled to make a joint return under section 6013 and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than $2,800 but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

Clause (ii) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151(e) of this title.

(B) The $2,050 amount specified in subparagraph (A)(i) shall be increased to $2,800 in the case of an individual entitled to an additional personal exemption under section 151(c)(1), and the $2,800 amount specified in subparagraph (A)(ii) shall be increased by $750 for each additional personal exemption to which the individual or his spouse is entitled under section 151(c);

(C) Every individual having for the taxable year a gross income of $750 or more and to whom section 141(e) (relating to limitations in case of certain dependent taxpayers) applies;

(2) Every corporation subject to taxation under subtitle A;

(3) Every estate the gross income of which for the taxable year is $600 or more;

(4) Every trust having for the taxable year any taxable income, or having gross income of $600 or over, regardless of the amount of taxable income;

(5) Every estate or trust of which any beneficiary is a nonresident alien; and

(6) Every political organization (within the meaning of section 527(e)(1)), and every fund treated under section 527(g) as if it constituted a political organization, which has political organization taxable income (within the meaning of section 527(c)(1)) for the taxable year,[4]

except that subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Secretary or his delegate, nonresident alien individuals subject to the tax imposed by section 871 and foreign corporations subject to the tax imposed by

[4] **Exemption from filing requirement for prior years where taxable income of political party was $100 or less:** In the case of a taxable year beginning after December 31, 1971, and before January 1, 1975, nothing in Title 26 of the U.S. Code shall be deemed to require any organization described in section 527(e)(1) of such title to file a return for the taxable year under such title if such organization would be exempt from so filing under section 6012(a)(6) of such title if such section applied to such taxable year.

section 881 may be exempted from the requirement of making returns under this section.

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PART VIII—DESIGNATION OF INCOME TAX PAYMENTS TO PRESIDENTIAL ELECTION CAMPAIGN FUND

§ 6096. Designation by individuals

(a) *In general.* Every individual (other than a nonresident alien) whose income tax liability for the taxable year is $1 or more may designate that $1 shall be paid over to the Presidential Election Campaign Fund in accordance with the provisions of section 9006(a). In the case of a joint return of husband and wife having an income tax liability of $2 or more, each spouse may designate that $1 shall be paid to the fund.

(b) *Income tax liability.* For purposes of subsection (a), the income tax liability of an individual for any taxable year is the amount of the tax imposed by chapter 1 on such individual for such taxable year (as shown on his return), reduced by the sum of the credits (as shown in his return) allowable under sections 33, 37, 38, 40, and 41.

(c) *Manner and time of designation.* A designation under subsection (a) may be made with respect to any taxable year—

(1) at the time of filing the return of the tax imposed by chapter 1 for such taxable year; or

(2) at any other time (after the time of filing the return of the tax imposed by chapter 1 for such taxable year) specified in regulations prescribed by the Secretary or his delegate.

Such designation shall be made in such manner as the Secretary or his delegate prescribed by regulations except that, if such designation is made at the time of filing the return of the tax imposed by chapter 1 for such taxable year, such designation shall be made either on the first page of the return or on the page bearing the taxpayer's signature.

CHAPTER 95—PRESIDENTIAL ELECTION CAMPAIGN FUND

§ 9001. Short title

This chapter may be cited as the "Presidential Election Campaign Fund Act".

§ 9002. Definitions

For purposes of this chapter—

(1) the term "authorized committee" means, with respect to the candidates of a political party for President and Vice President of the United States, any political committee which is authorized in writing by such candidates to incur expenses to further the election of such candidates. Such authorization shall be addressed to the chairman of such political committee, and a copy of such authorization shall be filed by such candidates with the Commission. Any withdrawal of any authorization shall also be in writing and shall be addressed and filed in the same manner as the authorization;

(2) the term "candidate" means, with respect to any presidential election, an individual who—

(A) has been nominated for election to the office of President of the United States or the office of Vice President of the United States by a major party; or

(B) has qualified to have his name on the election ballot (or to have the names of electors pledged to him on the election ballot) as the candidate of a political party for election to either such office in 10 or more States.

For purposes of paragraphs (6) and (7) of this section and purposes of section 9004(a)(2), the term "candidate" means, with respect to any preceding presidential election, an individual who received popular votes for the office of President in such election.

(3) The term "Commission" means the Federal Election Commission established by section 437c(a)(1) of Title 2, United States Code.

(4) The term "eligible candidates" means the candidates of a political party for President and Vice President of the United States who have met all applicable conditions for eligibility to receive payments under this chapter set forth in section 9003 of this title.

(5) The term "fund" means the Presidential Election Campaign Fund established by section 9006(a) of this title.

(6) The term "major party" means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office.

(7) The term "minor party" means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 5 percent or more but less than 25 percent of the total number of popular votes received by all candidates for such office.

(8) The term "new party" means, with respect to any presidential election, a political party which is neither a major party nor a minor party.

(9) The term "political committee" means any committee, association, or organization (whether or not incorporated) which accepts contributions or makes expenditures for the purpose of influencing, or attempting to influence, the nomination or election of one or more individuals to Federal, State, or local elective public office.

(10) The term "presidential election" means the election of presidential and vice presidential electors.

(11) The term "qualified campaign expense" means an expense—

(A) incurred—

(i) by the candidate of a political party for the office of President to further his election to such office or to further the election of the candidate of such political party for the office of Vice President, or both,

(ii) by the candidate of a political party for the office of Vice President to further his election to such office or to further the election of the candidate of such political party for the office of President, or both, or

(iii) by an authorized committee of the candidates of a political party for the offices of President and Vice President to further the election of either or both of such candidates to such offices;

(B) incurred within the expenditure report period (as defined in paragraph (12)), or incurred before the beginning of such period to the extent such expense is for property, services, or facilities used during such period; and

(C) neither the incurring nor payment of which constitutes a violation of any law of the United States or of the State in which such expense is incurred or paid.

An expense shall be considered as incurred by a candidate or an authorized committee if it is incurred by a person authorized by such candidate or such committee, as the case may be, to incur such expense on behalf of such candidate or such committee. If an authorized committee of the candidates of a political party for President and Vice President of the United States also incurs expenses to further the election of one or more other individuals to Federal, State, or local elective public office, expenses incurred by such committee which are not specifically to further the election of such other individual or individuals shall be considered as incurred to further the election of such candidates for President and Vice President in such proportion as the commission prescribes by rules or regulations.

(12) The term "expenditure report period" with respect to any presidential election means—

(A) in the case of a major party, the period beginning with the first day of September before the election, or, if earlier, with the date on which such major party at its national convention nominated its candidate for election to the office of President of the United States, and ending 30 days after the date of the presidential election; and

(B) in the case of a party which is not a major party, the same period as the expenditure report period of the major party which has the shortest expenditure report period for such presidential election under subparagraph (A).

§ 9003. Condition for eligibility for payments

(a) *In general.* In order to be eligible to receive any payments under section 9006, the candidates of a political party in a presidential election shall, in writing—

(1) agree to obtain and furnish to the Commission such evidence as it may request of the qualified campaign expenses of such candidates;

(2) agree to keep and furnish to the Commission such records, books, and other information as it may request; and

(3) agree to an audit and examination by the Commission under section 9007 and to pay any amounts required to be paid under such section.

(b) *Major parties.* In order to be eligible to receive any payments under section 9006, the candidates of a major party in a presidential election shall certify to the Commission, under penalty of perjury, that—

(1) such candidates and their authorized committees will not incur qualified campaign expenses in excess of the aggregate payments to which they will be entitled under section 9004; and

(2) no contributions to defray qualified campaign expenses have been or will be accepted by such candidates or any of their authorized committees except to the extent necessary to make up any deficiency in payments received out of the fund on account of the application of section 9006(d), and no contributions to

defray expenses which would be qualified campaign expenses but for subparagraph (C) of section 9002(11) have been or will be accepted by such candidates or any of their authorized committees.

Such certification shall be made within such time prior to the day of the presidential election as the Commission shall prescribe by rules or regulations.

(c) *Minor and new parties.* In order to be eligible to receive any payments under section 9006, the candidates of a minor or new party in a presidential election shall certify to the Commission, under penalty of perjury, that—

(1) such candidates and their authorized committees will not incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under section 9004; and

(2) such candidates and their authorized committees will accept and expend or retain contributions to defray qualified campaign expenses only to the extent that the qualified campaign expenses incurred by such candidates and their authorized committees certified to under paragraph (1) exceed the aggregate payments received by such candidates out of the fund pursuant to section 9006.

Such certification shall be made within such time prior to the day of the presidential election as the Commission shall prescribe by rules or regulations.

§ 9004. Entitlement of eligible candidates to payments

(a) *In general.* Subject to the provisions of this chapter—

(1) The eligible candidates of each major party in a presidential election shall be entitled to equal payments under section 9006 in an amount which, in the aggregate, shall not exceed the expenditure limitations applicable to such candidates under section 608(c)(1)(B) of Title 18, United States Code.

(2)(A) The eligible candidates of a minor party in a presidential election shall be entitled to payments under section 9006 equal in the aggregate to an amount which bears the same ratio to the amount allowed under paragraph (1) for a major party as the number of popular votes received by the candidate for President of the minor party, as such candidate, in the preceding presidential election bears to the average number of popular votes received by the candidates for President of the major parties in the preceding presidential election.

(B) If the candidate of one or more political parties (not including a major party) for the office of President was a candidate for such office in the preceding presidential election and required 5 percent or more but less than 25 percent of the total number of popular votes received by all candidates for such office, such candidate and his running mate for the office of Vice President, upon compliance with the provisions of section 9003(a) and (c), shall be treated as eligible candidates entitled to payments under section 9006 in an amount computed as provided in subparagraph (A) by taking into account all the popular votes received by such candidate for the office of President in the preceding presidential election. If eligible candidates of a minor party are entitled to payments under this subparagraph, such entitlement shall be reduced by the amount of the entitlement allowed under subparagraph (A).

(3) The eligible candidates of a minor party or a new party in a presidential election whose candidate for President in such election receives, as such candidate, 5 percent or more of the total number of popular votes cast for the office of President in such election shall be entitled to payments under section 9006 equal in the aggregate to an amount which bears the same ratio to the amount allowed under paragraph (1) for a major party as the number of popular votes received by such candidate in such election bears to the average number of popular votes received in such election by the candidates for President of the major parties. In the case of eligible candidates entitled to payments under paragraph (2), the amount allowable under this paragraph shall be limited to the amount, if any, by which the entitlement under the preceding sentence exceeds the amount of the entitlement under paragraph (2).

(b) *Limitations.* The aggregate payments to which the eligible candidates of a political party shall be entitled under subsections (a)(2) and (3) with respect to a presidential election shall not exceed an amount equal to the lower of—

(1) the amount of qualified campaign expenses incurred by such eligible candidates and their authorized committees, reduced by the amount of contributions to defray qualified campaign expenses received and expended or retained by such eligible candidates and such committees; or

(2) the aggregate payments to which the eligible candidates of a major party are entitled under subsection (a)(1), reduced by the amount of contributions described in paragraph (1) of this subsection.

(c) *Restrictions.* The eligible candidates of a political party shall be entitled to payments under subsection (a) only—

(1) to defray qualified campaign expenses incurred by such eligible candidates or their authorized committees; or

(2) to repay loans the proceeds of which were used to defray such qualified campaign expenses, or otherwise to restore funds (other than contributions to defray qualified campaign expenses received and expended by such candidates or such committees) used to defray such qualified campaign expenses.

§ 9005. Certification by Commission

(a) *Initial certifications.* Not later than 10 days after the candidates of a political party for President and Vice President of the United States have met all applicable conditions for eligibility to receive payments under this chapter set forth in section 9003, the Commission shall certify to the Secretary for payment to such eligible candidates under section 9006 payment in full of amounts to which such candidates are entitled under section 9004.

(b) *Finality of certifications and determinations.* Initial certifications by the Commission under subsection (a), and all determinations

made by it under this chapter shall be final and conclusive, except to the extent that they are subject to examination and audit by the Commission under section 9007 and judicial review under section 9011.

§ 9006. Payments to eligible candidates [5]

(a) *Establishment of campaign fund.* There is hereby established on the books of the Treasury of the United States a special fund to be known as the "Presidential Election Campaign Fund". The Secretary shall, from time to time, transfer to the fund an amount not in excess of the sum of the amounts designated (subsequent to the previous presidential election) to the fund by individuals under section 6096. There is appropriated to the fund for each fiscal year, out of amounts in the general fund of the Treasury not otherwise appropriated, an amount equal to the amounts so designated during each fiscal year, which shall remain available to the fund without fiscal year limitation.

(b) *Transfer to the general fund.* If, after a Presidential election and after all eligible candidates have been paid the amount which they are entitled to receive under this chapter, there are moneys remaining in the fund, the Secretary shall transfer the moneys so remaining to the general fund of the Treasury.

(c) *Payments from the fund.* Upon receipt of a certification from the Commission under section 9005 for payment to the eligible candidates of a political party, the Secretary shall pay to such candidates out of the fund the amount certified by the Commission. Amounts paid to any such candidates shall be under the control of such candidates.

(d) *Insufficient amounts in fund.* If at the time of a certification by the Commission under section 9005 for payment to the eligible candidates of a political party, the Secretary or his delegate determines that the moneys in the fund are not, or may not be, sufficient to satisfy the full entitlements of the eligible candidates of all political parties, he shall withhold from such payment such amount as he determines to be necessary to assure that the eligible candidates of each political party will receive their pro rata share of their full entitlement. Amounts withheld by reason of the preceding sentence shall be paid when the Secretary or his delegate determines that there are sufficient moneys in the fund to pay such amounts, or portions thereof, to all eligible candidates from whom amounts have been withheld, but, if there are not sufficient moneys in the fund to satisfy the full entitlement of the eligible candidates of all political parties, the amounts so withheld shall be paid in such manner that the eligible candidates of each political party receive their pro rata share of their full entitlement.

§ 9007. Examinations and audits; repayments

(a) *Examinations and audits.* After each presidential election, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of the candidates of each political party for President and Vice President.

[5] In addition to the amounts appropriated to the Presidential Election Campaign Fund established under section 9006 of this title (relating to payments to eligible candidates) by the last sentence of subsection (a) of such section, there is appropriated to such fund an amount equal to the sum of the amounts designated for payment under section 6096 of this title (relating to designation by individuals to the Presidential Election Campaign Fund) before January 1, 1975, not otherwise taken into account under the provisions of such section 9006.

(b) *Repayments.*

(1) If the Commission determines that any portion of the payments made to the eligible candidates of a political party under section 9006 was in excess of the aggregate payments to which candidates were entitled under section 9004, it shall so notify such candidates, and such candidates shall pay to the Secretary an amount equal to such portion.

(2) If the Commission determines that the eligible candidates of a political party and their authorized committees incurred qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party were entitled under section 9004, it shall notify such candidates of the amount of such excess and such candidates shall pay to the Secretary an amount equal to such amount.

(3) If the Commission determines that the eligible candidates of a major party or any authorized committee of such candidates accepted contributions (other than contributions to make up deficiencies in payments out of the fund on account of the application of section 9006(d)) to defray qualified campaign expenses (other than qualified campaign expenses with respect to which payment is required under paragraph (2)), it shall notify such candidates of the amount of the contributions so accepted, and such candidates shall pay to the Secretary an amount equal to such amount.

(4) If the Commission determines that any amount of any payment made to the eligible candidates of a political party under section 9006 was used for any purpose other than—

(A) to defray the qualified campaign expenses with respect to which such payment was made; or

(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray such qualified campaign expenses,

it shall notify such candidates of the amount so used, and such candidates shall pay to the Secretary an amount equal to such amount.

(5) No payment shall be required from the eligible candidates of a political party under this subsection to the extent that such payment, when added to other payments required from such candidates under this subsection, exceeds the amount of payments received by such candidates under section 9006.

(c) *Notification.* No notification shall be made by the Commission under subsection (b) with respect to a presidential election more than 3 years after the day of such election.

(d) *Deposit of repayments.* All payments received by the Secretary under subsection (b) shall be deposited by him in the general fund of the Treasury.

§ 9008. Payments for Presidential nominating conventions

(a) *Establishment of accounts.* The Secretary shall maintain in the fund, in addition to any account which he maintains under sec-

tion 9006(a), a separate account for the national committee of each major party and minor party. The Secretary shall deposit in each such account an amount equal to the amount which each such committee may receive under subsection (b). Such deposits shall be drawn from amounts designated by individuals under section 6096 and shall be made before any transfer is made to any account for any eligible candidate under section 9006(a).

(b) *Entitlement to payments from the fund.*

(1) *Major parties.* Subject to the provisions of this section, the national committee of a major party shall be entitled to payments under paragraph (3), with respect to any presidential nominating convention, in amounts which, in the aggregate, shall not exceed $2 million.

(2) *Minor parties.* Subject to the provisions of this section, the national committee of a minor party shall be entitled to payments under paragraph (3), with respect to any presidential nominating convention, in amounts which, in the aggregate, shall not exceed an amount which bears the same ratio to the amount the national committee of a major party is entitled to receive under paragraph (1) as the number of popular votes received by the candidate for President of the minor party, as such candidate, in the preceding presidential election bears to the average number of popular votes received by the candidates for President of the United States of the major parties in the preceding presidential election.

(3) *Payments.* Upon receipt of certification from the Commission under subsection (g), the Secretary shall make payments from the appropriate account maintained under subsection (a) to the national committee of a major party or minor party which elects to receive its entitlement under this subsection. Such payments shall be available for use by such committee in accordance with the provisions of subsection (c).

(4) *Limitation.* Payments to the national committee of a major party or minor party under this subsection from the account designated for such committee shall be limited to the amounts in such account at the time of payment.

(5) *Adjustment of entitlements.* The entitlements established by this subsection shall be adjusted in the same manner as expenditure limitations established by section 608(c) and section 608(f) of Title 18, United States Code, are adjusted pursuant to the provisions of section 608(d) of such title.

(c) *Use of funds.* No part of any payment made under subsection (b) shall be used to defray the expenses of any candidate or delegate who is participating in any presidential nominating convention. Such payments shall be used only—

(1) to defray expenses incurred with respect to a presidential nominating convention (including the payment of deposits) by or on behalf of the national committee receiving such payments; or

(2) to repay loans the proceeds of which were used to defray such expenses, or otherwise to restore funds (other than contributions to defray such expenses received by such committee) used to defray such expenses.

(d) *Limitation of expenditures.*

(1) *Major parties.* Except as provided by paragraph (3), the national committee of a major party may not make expenditures with respect to a presidential nominating convention which, in the aggregate, exceed the amount of payments to which such committee is entitled under subsection (b)(1).

(2) *Minor parties.* Except as provided by paragraph (3), the national committee of a minor party may not make expenditures with respect to a presidential nominating convention which, in the aggregate, exceed the amount of the entitlement of the national committee of a major party under subsection (b)(1).

(3) *Exception.* The Commission may authorize the national committee of a major party or minor party to make expenditures which, in the aggregate, exceed the limitation established by paragraph (1) or paragraph (2) of this subsection. Such authorization shall be based upon a determination by the Commission that, due to extraordinary and unforeseen circumstances, such expenditures are necessary to assure the effective operation of the presidential nominating convention by such committee.

(e) *Availability of payments.* The national committee of a major party or minor party may receive payments under subsection (b)(3) beginning on July 1 of the calendar year immediately preceding the calendar year in which a presidential nominating convention of the political party involved is held.

(f) *Transfer to the fund.* If, after the close of a presidential nominating convention and after the national committee of the political party involved has been paid the amount which it is entitled to receive under this section, there are moneys remaining in the account of such national committee, the Secretary shall transfer the moneys so remaining to the fund.

(g) *Certification by Commission.* Any major party or minor party may file a statement with the Commission in such form and manner and at such times as it may require, designating the national committee of such party. Such statement shall include the information required by section 433(b) of Title 2, United States Code, together with such additional information as the Commission may require. Upon receipt of a statement filed under the preceding sentences, the Commission promptly shall verify such statement according to such procedures and criteria as it may establish and shall certify to the Secretary for payment in full to any such committee of amounts to which such committee may be entitled under subsection (b). Such certifications shall be subject to an examination and audit which the Commission shall conduct no later than December 31 of the calendar year in which the presidential nominating convention involved is held.

(h) *Repayments.* The Commission shall have the same authority to require repayments from the national committee of a major party or a minor party as it is has with respect to repayments from any eligible candidate under section 9007(b). The provisions of section 9007(c) and section 9007(d) shall apply with respect to any repayment required by the Commission under this subsection.

§ 9009. Reports to Congress; regulations

(a) *Reports.* The Commission shall, as soon as practicable after each presidential election, submit a full report to the Senate and House of Representatives setting forth—

(1) the qualified campaign expenses (shown in such detail as the Commission determines necessary) incurred by the candidates of each political party and their authorized committees;

(2) the amounts certified by it under section 9005 for payment to eligible candidates of each political party;

(3) the amount of payments, if any, required from such candidates under section 9007, and the reasons for each payment required;

(4) the expenses incurred by the national committee of a major party or minor party with respect to a presidential nominating convention;

(5) the amounts certified by it under section 9008(g) for payment to each such committee; and

(6) the amount of payments, if any, required from such committees under section 9008(h), and the reasons for each such payment.

Each report submitted pursuant to this section shall be printed as a Senate document.

(b) *Regulations, etc.* The Commission is authorized to prescribe such rules and regulations in accordance with the provisions of subsection (c), to conduct such examinations and audits (in addition to the examination and audits required by section 9007(a)), to conduct such investigations, and to require the keeping and submission of such books, records, and information, as it deems necessary to carry out the functions and duties imposed on it by this chapter.

(c) *Review of regulations.*

(1) The Commission, before prescribing any rule or regulation under subsection (b), shall transmit a statement with respect to such rule or regulation to the Senate and to the House of Representatives, in accordance with the provisions of this subsection. Such statement shall set forth the proposed rule or regulation and shall contain a detailed explanation and justification of such rule or regulation.

(2) If either such House does not, through appropriate action, disapprove the proposed rule or regulation set forth in such statement no later than 30 legislative days after receipt of such statement, then the Commission may prescribe such rule or regulation. The Commission may not prescribe any rule or regulation which is disapproved by either such House under this paragraph.

(3) For purposes of this subsection, the term "legislative days" does not include any calendar day on which both Houses of the Congress are not in session.

§ 9010. Participation by Commission in judicial proceedings

(a) *Appearance by counsel.* The Commission is authorized to appear in and defend against any action filed under section 9011, either by attorneys employed in its office or by counsel whom he may appoint without regard to the provisions of Title 5, United States Code, governing appointments in the competitive service, and whose compensation it may fix without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title.

(b) *Recovery of certain payments.* The Commission is authorized through attorneys and counsel described in subsection (a) to appear in the district courts of the United States to seek recovery of any amounts determined to be payable to the Secretary as a result of examination and audit made pursuant to section 9007.

(c) *Declaratory and injunctive relief.* The Commission is authorized through attorneys and counsel described in subsection (a) to petition the courts of the United States for declaratory or injunctive relief concerning any civil matter covered by the provisions of this subtitle or section 6096. Upon application of the Commission, an action brought pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28, United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

(d) *Appeal.* The Commission is authorized on behalf of the United States to appeal from, and to petition the Supreme Court for certiorari to review, judgments or decrees entered with respect to actions in which it appears pursuant to the authority provided in this section.

§ 9011. Judicial review

(a) *Review of certification, determination, or other action by the Commission.* Any certification, determination, or other action by the Commission made or taken pursuant to the provisions of this chapter shall be subject to review by the U.S. Court of Appeals for the District of Columbia upon petition filed in such Court by any interested person. Any petition filed pursuant to this section shall be filed within 30 days after the certification, determination, or other action by the Commission for which review is sought.

(b) *Suits to implement chapter.*

(1) The Commission, the national committee of any political party, and individuals eligible to vote for President are authorized to institute such actions, including actions for declaratory judgment or injunctive relief, as may be appropriate to implement or contrue [sic] any provision of this chapter.

(2) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this subsection and shall exercise the same without regard to whether a person asserting rights under provisions of this subsection shall have exhausted any administrative or other remedies that may be provided at law. Such proceedings shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28, United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

§ 9012. Criminal penalties

(a) *Excess expenses.*

(1) It shall be unlawful for an eligible candidate of a political party for President and Vice President in a presidential election or any of his authorized committees knowingly and willfully to incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under section 9004 with respect to such election. It shall be unlawful for the national committee of a major party or minor party knowingly and willfully to incur expenses with respect to a presidential nominating convention in excess of the expenditure limitation applicable with respect to such committee under section 9008(d), unless the incurring of such expenses is authorized by the Commission under section 9008(d)(3).

(2) Any person who violates paragraph (1) shall be fined not more than $5,000, or imprisoned not more than 1 year or both. In the case of a violation by an authorized committee, any officer or member of such committee who knowingly and willfully consents to such violation shall be fined not more than $5,000, or imprisoned not more than 1 year, or both.

(b) *Contributions.*

(1) It shall be unlawful for an eligible candidate of a major party in a presidential election or any of his authorized committees knowingly and willfully to accept any contribution to defray qualified campaign expenses, except to the extent necessary to make up any deficiency in payments received out of the fund on account of the application of section 9006(d), or to defray expenses which would be qualified campaign expenses but for subparagraph (C) of section 9002(11).

(2) It shall be unlawful for an eligible candidate of a political party (other than a major party) in a presidential election or any of his authorized committees knowingly and willfully to accept and expend or retain contributions to defray qualified campaign expenses in an amount which exceeds the qualified campaign expenses incurred with respect to such election by such eligible candidate and his authorized committees.

(3) Any person who violates paragraph (1) or (2) shall be fined not more than $5,000, or imprisoned not more than 1 year, or both. In the case of a violation by an authorized committee, any officer or member of such committee who knowingly and willfully consents to such violation shall be fined not more than $5,000, or imprisoned not more than 1 year, or both.

(c) *Unlawful use of payments.*

(1) It shall be unlawful for any person who receives any payment under section 9006, or to whom any portion of any payment received under such section is transferred, knowingly and willfully to use, or authorize the use of, such payment or such portion for any purpose other than—

(A) to defray the qualified campaign expenses with respect to which such payment was made; or

(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray such qualified campaign expenses.

(2) It shall be unlawful for the national committee of a major party or minor party which receives any payment under section 9008(b)(3) to use, or authorize the use of, such payment for any purpose other than a purpose authorized by section 9008(c).

(3) Any person who violates paragraph (1) shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

(d) *False statements, etc.*

(1) It shall be unlawful for any person knowingly and willfully—

(A) to furnish any false, fictitious, or fraudulent evidence, books, or information to the Commission under this subtitle, or to include in any evidence, books, or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books, or information relevant to a certification by the Commission or an examination and audit by the Commission under this chapter; or

(B) to fail to furnish to the Commission any records, books, or information requested by it for purposes of this chapter.

(2) Any person who violates paragraph (1) shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

(e) *Kickbacks and illegal payments.*

(1) It shall be unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any qualified campaign expense of eligible candidates or their authorized committees. It shall be unlawful for the national committee of a major party or minor party knowingly and willfully to give or accept any kickback or any illegal payment in connection with any expense incurred by such committee with respect to a presidential nominating convention.

(2) Any person who violates paragraph (1) shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

(3) In addition to the penalty provided by paragraph (2), any person who accepts any kickback or illegal payment in connection with any qualified campaign expense of eligible candidates or their authorized committees, or in connection with expense incurred by the national committee of a major party or minor party with respect to a presidential nominating convention, shall pay to the Secretary, for deposit in the general fund of the Treasury, an amount equal to 125 percent of the kickback or payment received.

(f) *Unauthorized expenditures and contributions.*

(1) Except as provided in paragraph (2), it shall be unlawful for any political committee which is not an authorized committee with respect to the eligible candidates of a political party for President and Vice President in a presidential election knowingly and willfully to incur expenditures to further the election of such candidates, which would constitute qualified campaign expenses if incurred by an authorized committee of such candidates, in an aggregate amount exceeding $1,000.

(2) This subsection shall not apply to—

(A) expenditures by a broadcaster regulated by the Federal Communications Commission, or by a periodical publication, in reporting the news or in taking editorial positions; or

(B) expenditures by any organization described in section 501(c) which is exempt from tax under section 501(a) in communicating to its members the views of that organization.

(3) Any political committee which violates paragraph (1) shall be fined not more than $5,000, and any officer or member of such committee who knowingly and willfully consents to such violation and any other individual who knowingly and willfully violates paragraph (1) shall be fined not more than $5,000, or imprisoned not more than 1 year, or both.

(g) *Unauthorized disclosure of information.*

(1) It shall be unlawful for any individual to disclose any information obtained under the provisions of this chapter except as may be required by law.

(2) Any person who violates paragraph (1) shall be fined not more than $5,000, or imprisoned not more than 1 year, or both.

Chapter 96—Presidential Primary Matching Payment Account

§ 9031. Short title

This chapter may be cited as the "Presidential Primary Matching Payment Account Act".

§ 9032. Definitions

For purposes of this chapter—

(1) The term "authorized committee" means, with respect to the candidates of a political party for President and Vice President of the United States, any political committee which is authorized in writing by such candidates to incur expenses to further the election of such candidates. Such authorization shall be addressed to the chairman of such political committee, and a copy of such authorization shall be filed by such candidates with the Commission. Any withdrawal of any authorization shall also be in writing and shall be addressed and filed in the same manner as the authorization.

(2) The term "candidate" means an individual who seeks nomination for election to be President of the United States. For purposes of this paragraph, an individual shall be considered to seek nomination for election if he—

(A) takes the action necessary under the law of a State to qualify himself for nomination for election;

(B) receives contributions or incurs qualified campaign expenses; or

(C) gives his consent for any other person to receive contributions or to incur qualified campaign expenses on his behalf.

(3) The term "Commission" means the Federal Election Commission established by section 437c(a)(1) of Title 2, United States Code.

(4) Except as provided by section 9034(a), the term "contribution"—

(A) means a gift, subscription, loan, advance, or deposit of money, or anything of value, the payment of which was made on or after the beginning of the calendar year immediately preceding the calendar year of the presidential election with respect to which such gift, subscription, loan, advance, or deposit of money, or anything of value, is made for the purpose of influencing the result of a primary election;

(B) means a contract, promise, or agreement, whether or not legally enforceable, to make a contribution for any such purpose;

(C) means funds received by a political committee which are transferred to that committee from another committee; and

(D) means the payment by any person other than a candidate, or his authorized committee, of compensation for the personal services of another person which are rendered to the candidate or committee without charge; but

(E) does not include—

(i) except as provided in subparagraph (D), the value of personal services rendered to or for the benefit of a candidate by an individual who receives no compensation for rendering such service to or for the benefit of the candidate; or

(ii) payments under section 9037.

(5) The term "matching payment account" means the Presidential Primary Matching Payment Account established under section 9037(a).

(6) The term "matching payment period" means the period beginning with the beginning of the calendar year in which a general election for the office of President of the United States will be held and ending on the date on which the national convention of the party whose nomination a candidate seeks nominates its candidate for the office of President of the United States, or, in the case of a party which does not make such nomination by national convention, ending on the earlier of—

(A) the date such party nominates its candidate for the office of President of the United States; or

(B) the last day of the last national convention held by a major party during such calendar year.

(7) The term "primary election" means an election, including a runoff election or a nominating convention or caucus held by a political party, for the selection of delegates to a national nominating convention of a political party, or for the expression of a preference for the nomination of persons for election to the office of President of the United States.

(8) The term "political committee" means any individual, committee, association, or organization (whether or not incorporated) which accepts contributions or incurs qualified campaign expenses for the purpose of influencing, or attempting to influence, the nomination of any person for election to the office of President of the United States.

(9) The term "qualified campaign expense" means a purchase, payment, distribution, loan, advance, deposit, or gift of money or of anything of value—

(A) incurred by a candidate, or by his authorized committee, in connection with his campaign for nomination for election; and

(B) neither the incurring nor payment of which constitutes a violation of any law of the United States or of the State in which the expense is incurred or paid.

For purposes of this paragraph, an expense is incurred by a candidate or by an authorized committee if it is incurred by a person specifically authorized in writing by the candidate or committee, as the case may be, to incur such expense on behalf of the candidate or the committee.

(10) The term "State" means each State of the United States and the District of Columbia.

§ 9033. Eligibility for payments

(a) *Conditions.* To be eligible to receive payments under section 9037, a candidate shall, in writing—

(1) agree to obtain and furnish to the Commission any evidence it may request of qualified campaign expenses;

(2) agree to keep and furnish to the Commission any records, books, and other information it may request; and

(3) agree to an audit and examination by the Commission under section 9038 and to pay any amounts required to be paid under such section.

(b) *Expense limitation; declaration of intent; minimum contributions.* To be eligible to receive payments under section 9037, a candidate shall certify to the Commission that—

(1) the candidate and his authorized committees will not incur qualified campaign expenses in excess of the limitation on such expenses under section 9035;

(2) the candidate is seeking nomination by a political party for election to the office of President of the United States;

(3) the candidate has received matching contributions which in the aggregate, exceed $5,000 in contributions from residents of each of at least 20 States; and

(4) the aggregate of contributions certified with respect to any person under paragraph (3) does not exceed $250.

§ 9034. Entitlement of eligible candidates to payments

(a) *In general.* Every candidate who is eligible to receive payments under section 9033 is entitled to payments under section 9037 in an amount equal to the amount of each contribution received by such candidate on or after the beginning of the calendar year immediately preceding the calendar year of the presidential election with respect to which such candidate is seeking nomination, or by his authorized committees, disregarding any amount of contributions from any person to the extent that the total of the amounts contributed by such person on or after the beginning of such preceding calendar year exceeds $250. For purposes of this subsection and section 9033(b), the term "contribution" means a gift of money made by a written instrument which identifies the person making the contribution by full name and mailing address, but does not include a subscription, loan, advance, or deposit of money, or anything of value or anything described in subparagraph (B), (C), or (D) of section 9032(4).

(b) *Limitations.* The total amount of payments to which a candidate is entitled under subsection (a) shall not exceed 50 percent of the expenditure limitation applicable under section 608(c)(1)(A) of Title 18, United States Code.

§ 9035. Qualified campaign expense limitation

No candidate shall knowingly incur qualified campaign expenses in excess of the expenditure limitation applicable under section 608(c)(1)(A) of Title 18, United States Code.

§ 9036. Certification by Commission

(a) *Initial certifications.* Not later than 10 days after a candidate establishes his eligibility under section 9033 to receive payments under section 9037, the Commission shall certify to the Secretary for payment to such candidate under section 9037 payment in full of amounts to which such candidate is entitled under section 9034. The Commission shall make such additional certifications as may be necessary to permit candidates to receive payments for contributions under section 9037.

(b) *Finality of determinations.* Initial certifications by the Commission under subsection (a), and all determinations made by it under this chapter, are final and conclusive, except to the extent that they are subject to examination and audit by the Commission under section 9038 and judicial review under section 9041.

§ 9037. Payments to eligible candidates

(a) *Establishment of account.* The Secretary shall maintain in the Presidential Election Campaign Fund established by section 9006(a), in addition to any account which he maintains under such section, a separate account to be known as the Presidential Primary Matching Payment Account. The Secretary shall deposit into the matching payment account, for use by the candidate of any political party who is eligible to receive payments under section 9033, the amount available after the Secretary determines that amounts for payments under section 9006(c) and for payments under section 9008(b)(3) are available for such payments.

(b) *Payments from the matching payment account.* Upon receipt of a certification from the Commission under section 9036, but not before the beginning of the matching payment period, the Secretary or his delegate shall promptly transfer the amount certified by the Commission from the matching payment account to the candidate. In making such transfers to candidates of the same political party, the Secretary or his delegate shall seek to achieve an equitable distribution of funds available under subsection (a), and the Secretary or his delegate shall take into account, in seeking to achieve an equitable distribution, the sequence in which such certifications are received.

§ 9038. Examinations and audits; repayments

(a) *Examinations and audits.* After each matching payment period, the Commission shall conduct a thorough examination and

audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under section 9037.

(b) *Repayments.*

(1) If the Commission determines that any portion of the payments made to a candidate from the matching payment account was in excess of the aggregate amount of payments to which such candidate was entitled under section 9034, it shall notify the candidate, and the candidate shall pay to the Secretary or his delegate an amount equal to the amount of excess payments.

(2) If the Commission determines that any amount of any payment made to a candidate from the matching payment account was used for any purpose other than—

(A) to defray the qualified campaign expenses with respect to which such payment was made; or

(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray qualified campaign expenses;

it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary or his delegate an amount equal to such amount.

(3) Amounts received by a candidate from the matching payment account may be retained for the liquidation of all obligations to pay qualified campaign expenses incurred for a period not exceeding 6 months after the end of the matching payment period. After all obligations have been liquidated, that portion of any unexpended balance remaining in the candidate's accounts which bears the same ratio to the total unexpended balance as the total amount received from the matching payment account bears to the total of all deposits made into the candidate's accounts shall be promptly repaid to the matching payment account.

(c) *Notification.* No notification shall be made by the Commission under subsection (b) with respect to a matching payment period more than 3 years after the end of such period.

(d) *Deposit of repayments.* All payments received by the Secretary or his delegate under subsection (b) shall be deposited by him in the matching payment account.

§ 9039. Reports to Congress; regulations

(a) *Reports.* The Commission shall, as soon as practicable after each matching payment period, submit a full report to the Senate and House of Representatives setting forth—

(1) the qualified campaign expenses (shown in such detail as the Commission determines necessary) incurred by the candidates of each political party and their authorized committees;

(2) the amounts certified by it under section 9036 for payment to each eligible candidate; and

(3) the amount of payments, if any, required from candidates under section 9038, and the reasons for each payment required.

Each report submitted pursuant to this section shall be printed as a Senate document.

(b) *Regulations, etc.* The Commission is authorized to prescribe rules and regulations in accordance with the provisions of subsection (c), to conduct examinations and audits (in addition to the examinations and audits required by section 9038(a)), to conduct investigations, and to require the keeping and submission of any books, records, and information, which it determines to be necessary to carry out its responsibilities under this chapter.

(c) *Review of regulations.*

(1) The Commission, before prescribing any rule or regulation under subsection (b), shall transmit a statement with respect to such rule or regulation to the Senate and to the House of Representatives, in accordance with the provisions of this subsection. Such statement shall set forth the proposed rule or regulation and shall contain a detailed explanation and justification of such rule or regulation.

(2) If either such House does not, through appropriate action, disapprove the proposed rule or regulation set forth in such statement no later than 30 legislative days after receipt of such statement, then the Commission may prescribe such rule or regulation. The Commission may not prescribe any rule or regulation which is disapproved by either such House under this paragraph.

(3) For purposes of this subsection, the term "legislative days" does not include any calendar day on which both Houses of the Congress are not in session.

§ 9040. Participation by Commission in judicial proceedings

(a) *Appearance by counsel.* The Commission is authorized to appear in and defend against any action instituted under this section, either by attorneys employed in its office or by counsel whom it may appoint without regard to the provisions of Title 5, United States Code, governing appointments in the competitive service, and whose compensation it may fix without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title.

(b) *Recovery of certain payments.* The Commission is authorized, through attorneys and counsel described in subsection (a), to institute actions in the district courts of the United States to seek recovery of any amounts determined to be payable to the Secretary or his delegate as a result of an examination and audit made pursuant to section 9038.

(c) *Injunctive relief.* The Commission is authorized, through attorneys and counsel described in subsection (a), to petition the courts of the United States for such injunctive relief as is appropriate to implement any provision of this chapter.

(d) *Appeal.* The Commission is authorized on behalf of the United States to appeal from, and to petition the Supreme Court for certiorari to review, judgments or decrees entered with respect to actions in which it appears pursuant to the authority provided in this section.

§ 9041. Judicial review

(a) *Review of agency action by the Commission.* Any agency action by the Commission made under the provisions of this chapter shall be subject to review by the United States Court of Appeals for the District of Columbia Circuit upon petition filed in such court within 30 days after the agency action by the Commission for which review is sought.

(b) *Review procedures.* The provisions of chapter 7 of Title 5, United States Code, apply to judicial review of any agency action, as

(G) mail matter, including general mass mailings, which consists of Federal laws, Federal regulations, other Federal publications, publications purchased with Federal funds, or publications containing items of general information;

(H) mail matter which consists of voter registration or election information or assistance prepared and mailed in a nonpartisan manner;

(I) mail matter which constitutes or includes a biography or autobiography of any Member of, or Member-elect to, Congress or any biographical or autobiographical material concerning such Member or Member-elect or the spouse or other members of the family of such Member or Member-elect, and which is so mailed as a part of a Federal publication or in response to a specific request therefor and is not included for publicity purposes in a newsletter or other general mass mailing of the Member or Member-elect under the franking privilege; or

(J) mail matter which contains a picture, sketch, or other likeness of any Member or Member-elect and which is so mailed as a part of a Federal publication or in response to a specific request therefor and, when contained in a newsletter or other general mass mailing of any Member or Member-elect, is not of such size, or does not occur with such frequency in the mail matter concerned, as to lead to the conclusion that the purpose of such picture, sketch, or likeness is to advertise the Member or Member-elect rather than to illustrate accompanying text.

(4) It is the intent of the Congress that the franking privilege under this section shall not permit, and may not be used for, the transmission through the mails as franked mail, of matter which in its nature is purely personal to the sender or to any other person and is unrelated to the official business, activities, and duties of the public officials covered by subsection (b)(1) of this section.

(5) It is the intent of the Congress that a Member of or Member-elect to Congress may not mail as franked mail—

(A) mail matter which constitutes or includes any article, account, sketch, narration, or other text laudatory and complimentary of any Member of, or Member-elect to, Congress on a purely personal or political basis rather than on the basis of performance of official duties as a Member or on the basis of activities as a Member-elect;

(B) mail matter which constitutes or includes—

(i) greetings from the spouse or other members of the family of such Member or Member-elect;

(ii) reports of how or when such Member or Member-elect, or the spouse or any other member of the family of such Member or Member-elect, spends time other than in the performance of, or in connection with, the legislative, representative, and other official function of such Member or the activities of such Member-elect as a Member-elect; or

(iii) any card expressing holiday greetings from such Member or Member-elect;

(C) mail matter which specifically solicits political support for the sender or any other person or any political party or a vote or financial assistance for any candidate for any public office; or

(D) any mass mailing when the same is mailed at or delivered to any postal facility less than 28 days immediately before the date of any primary or general election (whether regular, special, or runoff) in which such Member or Member-elect is a candidate for public office. For the purpose of this clause (D), the term "mass mailing" shall mean newsletters and similar mailings of more than 500 pieces in which the content of the matter mailed is substantially identical but shall not apply to mailings—

(i) which are in direct response to inquiries or requests from the persons to whom the matter is mailed;

(ii) to colleagues in Congress or to government officials (whether Federal, State, or local); or

(iii) of news releases to the communications media.

The House Commission on Congressional Mailing Standards and the Select Committee on Standards and Conduct of the Senate shall prescribe for their respective Houses such rules and regulations and shall take such other action, as the Commission or Committee considers necessary and proper for the Members and Members-elect to conform to the provisions of this clause and applicable rules and regulations. Such rules and regulations shall include, but not be limited to, provisions prescribing the time within which such mailings shall be mailed at or delivered to any postal facility to attain compliance with this clause and the time when such mailings shall be deemed to have been so mailed or delivered and such compliance attained.

(b)(1) The Vice President, each Member of or Member-elect to Congress, the Secretary of the Senate, the Sergeant at Arms of the Senate, and each of the elected officers of the House of Representatives (other than a Member of the House), until the first day of April following the expiration of their respective terms of office, and the Legislative Counsels of the House of Representatives and the Senate, may send, as franked mail, matter relating to their official business, activities, and duties, as intended by Congress to be mailable as franked mail under subsection (a) (2) and (3) of this section.

(2) If a vacancy occurs in the Office of the Secretary of the Senate, the Sergeant at Arms of the Senate, an elected officer of the House of Representatives (other than a Member of the House), or the Legislative Counsel of the House of Representatives or the Senate, any authorized person may exercise the franking privilege in the officer's name during the period of the vacancy.

(c) Franked mail may be in any form appropriate for mail matter, including, but not limited to, correspondence, newsletters, questionnaires, recordings, facsimiles, reprints, and reproductions. Franked mail shall not include matter which is intended by Congress to be nonmailable as franked mail under subsection (a) (4) and (5) of this section.

(d)(1) A Member of the House may mail franked mail with a simplified form of address for delivery—

(A) within that area constituting the congressional district from which he was elected; and

(B) on and after the date on which the proposed redistricting of congressional districts in his State by legislative or judicial proceedings is initially completed (whether or not the redistricting is actually in effect), within any additional area of each congressional district proposed or established in such redistricting and containing all or part of the area constituting the congressional district from which he was elected, unless and until the congressional district so proposed or established is changed by legislative or judicial proceedings.

(2) A Member-elect to the House of Representatives may mail franked mail with a simplified form of address for delivery within that area constituting the congressional district from which he was elected.

(3) A Delegate, Delegate-elect, Resident Commissioner, or Resident Commissioner-elect to the House of Representatives may mail franked mail with a simplified form of address for delivery within the area from which he was elected.

(4) Franked mail mailed with a simplified form of address under this subsection—

(A) shall be prepared as directed by the Postal Service; and

(B) may be delivered to—

(i) each box holder or family on a rural or star route;

(ii) each post office box holder; and

(iii) each stop or box on a city carrier route.

(5) For the purposes of this subsection, a congressional district includes, in the case of a Representative at Large or Representative at Large-elect, the State from which he was elected.

(e) The frankability of mail matter shall be determined under the provisions of this section by the type and content of the mail sent, or to be sent. Notwithstanding any other provision of law, the cost of preparing or printing mail matter which is frankable under this section may be paid from any funds, including, but not limited to, funds collected by a candidate or a political committee required to file reports of receipts and expenditures under the Federal Election Campaign Act of 1971, P.L. 92-225, as amended by the Federal Election Campaign Act Amendments of 1974, P.L. 93-443, or from voluntary newsletter funds, or from similar funds administered and controlled by a Member or by a committee organized to administer such funds.

(f) Notwithstanding any other provision of Federal, State, or local law, or any regulation thereunder, the equivalent amount of postage determined under section 3216 of this title on franked mail mailed under the frank of the Vice President or a Member of Congress, and the cost of preparing or printing such frankable matter for such mailing under the frank, shall not be considered as a contribution to, or an expenditure by, the Vice President or a Member of Congress for the purpose of determining any limitation on expenditures or contributions with respect to any such official, imposed by any Federal, State, or local law or regulation, in connection with any campaign of such official for election to any Federal office.

TITLE 42. THE PUBLIC HEALTH AND WELFARE

CHAPTER 34—ECONOMIC OPPORTUNITY PROGRAM

SUBCHAPTER VI, PART A—ADMINISTRATION

§ 2943. Political activities of personnel of overall community action agencies; rules and regulations

(a) For purpose of chapter 15 of Title 5 any overall community action agency which assumes responsibility for planning, developing, and coordinating communitywide antipoverty programs and receives assistance under this chapter shall be deemed to be a State or local agency; and for purposes of clauses (1) and (2) of section 1502(a) of such title any agency receiving assistance under this chapter (other than part C of the subchapter I) shall be deemed to be a State or local agency.

(b) Programs assisted under this chapter shall not be carried on in a manner involving the use of program funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of such programs with—

(1) any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office,

(2) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election, or

(3) any voter registration activity.

The Director, after consultation with the Civil Service Commission, shall issue rules and regulations to provide for the enforcement of this section, which shall include provisions for summary suspension of assistance or other action necessary to permit enforcement on an emergency basis.

(c) No part of any funds appropriated to carry out this chapter, subpart (1) of part B of title V of the Higher Education Act of 1965, or any program administered by ACTION shall be used to finance, directly or indirectly, any activity designed to influence the outcome of any election to Federal office, or any voter registration activity, or to pay the salary of any officer or employee of the Office of Economic Opportunity, the Teacher Corps, or ACTION, who, in his official capacity as such an officer or employee, engages in any such activity. As used in this section, the term "election" has the same meaning given such term by section 431(a) of Title 2, and the term "Federal office" has the same meaning given such term by section 431(c) of Title 2.

TITLE 47. TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS

CHAPTER 5—WIRE OR RADIO COMMUNICATION

§ 312. Administrative sanctions

(a) *Revocation of station license or construction permit.* The Commission may revoke any station license or construction permit—

* * * * * * *

(7) for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy.

* * * * * * *

§ 315. Candidates for public office

(a) *Equal opportunities requirement; censorship prohibition; allowance of station use; news appearances exception; public interest; public issues discussion opportunities.* If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: *Provided*, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is imposed under this subsection upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any—

(1) bona fide newscast;

(2) bona fide news interview;

(3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary); or

(4) on-the-spot coverage of bona fide events (including but not limited to political conventions and activities incidental thereto);

shall not be deemed to be use of a broadcasting station within the meaning of this subsection. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this chapter to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

(b) *Broadcast media rates.* The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed—

(1) during the 45 days preceding the date of a primary or primary runoff election and during the 60 days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period; and

(2) at any other time, the charges made for comparable use of such station by other users thereof.

(c) *Definitions.* For purposes of this section—

(1) the term "broadcasting station" includes a community antenna television system; and

(2) the terms "licensee" and "station licensee" when used with respect to a community antenna television system mean the operator of such system.

(d) *Rules and regulations.* The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

CHAPTER 7—[REPEALED] [1]

[1] See, *supra*, p. 20, footnote to 2 U.S.C. 437c. Chapter 7 was entitled "Campaign Communications."

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In the Supreme Court of the United States

OCTOBER TERM, 1975

JAMES L. BUCKLEY, ET AL., APPELLANTS

v.

FRANCIS R. VALEO, ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MEMORANDUM FOR THE ATTORNEY GENERAL AND THE FEDERAL ELECTION COMMISSION IN RESPONSE TO JURISDICTIONAL STATEMENTS

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Appellees the Attorney General of the United States and the Federal Election Commission agree that these appeals present substantial questions which warrant plenary consideration by this Court. They

therefore join with the appellants in urging that probable jurisdiction should be noted.

Respectfully submitted.

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SEPTEMBER 1975.

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Abington School District v. *Schempp*,
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Abrams v. *United States*,
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ACLU v. *Jennings*,
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Staats v. *ACLU*, 43 U.S.L.W. 5043 (1975) . .51, 108, 126, 177, 223

American Party of Texas v. *White*,
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Aptheker v. *Secretary of State*,
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Baird v. *Arizona*,
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Bantam Books, Inc. v. *Sullivan*,
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Bare v. *Gorton*,
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Beauharnais v. *Illinois*,
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Bigelow v. *Virginia*,
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Branzburg v. *Hayes*,
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Broadrick v. *Oklahoma*,
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Buckley v. *Valeo*,
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Buckley v. *Valeo*,
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Bullock v. *Carter*,
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Burroughs v. *United States*,
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Cantwell v. *Connecticut*,
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Carmichael v. *Southern Coal Co.*,
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Civil Service Commission v. *Letter Carriers*,
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Columbia Broadcasting System, Inc., v.
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Confiscation Cases,
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Cousins v. *Wigoda*,
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Cox v. *Louisiana*,
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Cox v. New Hampshire,
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Daniel v. *Family Sec. Life Ins. Co.*,
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Deras v. *Myers*,
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Eastern Railroad Presidents' Conference
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Edwards v. *South Carolina*,
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Erzoznik v. *City of Jacksonville*,
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Estes v. *Texas*,
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Everson v. *Board of Education*,
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Field v. *People*,
3 Ill. 79 (1839) 197

Flast v. *Cohen*,
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Freedman v. *Maryland*,
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Garrison v. *Louisiana*,
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Georgia Socialist Workers Party v. *Fortson*,
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Gibson v. *Florida Legislative Investigation Committee*,
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Glidden Co. v. *Zdanok*,
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Gould v. *Grubb*,
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Gravel v. *United States*,
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Grosjean v. *American Press Co.*,
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J.W. Hampton, Jr. & Co. v. *United States*,
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Harper v. *Virginia Board of Elections*,
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Humphrey's Executor v. *United States*,
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In re Stolar,
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Jenness v. *Fortson*,
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Jordon v. *DeGeorge*,
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Keyishian v. *Board of Regents*,
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Kilbourn v. *Thompson*,
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Kovacs v. *Cooper*,
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Kramer v. *Union Free School District*,
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Kusper v. *Pontikes*,
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Lamont v. *Postmaster General*,
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Lemon v. *Kurtzman*,
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Lovell v. *Griffen*,
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Lubin v. *Panish*,
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Marbury v. *Madison*,
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Marshall v. *Gordon*,
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Martin v. *Struthers*,
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Massachusetts v. *Mellon*,
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McDonald v. *Galligan*,
Col. Sup. Ct. 1910 (unreported)
described in Merriam and Overacker,
Primary Elections 306 (1928) 152

Meeks v. *Pittenger*,
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Miami Herald Publishing Co. v. *Tornillo*,
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Mills v. *Alabama*,
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Monitor Patriot Co. v. *Roy*,
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Myers v. *United States*,
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NAACP v. *Alabama*,
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NAACP v. *Button*,
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New York Times v. *Sullivan*,
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New York Times v. *United States*,
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O'Donoghue v. *United States*,
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Olmstead v. *United States*,
277 U.S. 438 (1928) 38

Opinion of the Justices,
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Palko v. *Connecticut*,
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Pichler v. *Jennings*,
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Pierce v. *Kohler*,
163 Wisc. 615, 158 N.W. 696 (1916) 50

Pittsburg Press Co. v. *Pittsburgh Commission on Human Relations*,
413 U.S. 376 (1973) 52

Police Department of Chicago v. *Mosley*,
408 U.S. 92 (1972) 28, 54, 111

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Pollard v. *Roberts*, 283 F. Supp. 248 (E.D. Ark.), *aff'd per curiam*, 393 U.S. 14 (1968) 34, 51, 176, 177, 180

Ponzi v. *Fessenden*, 258 U.S. 254 (1922) 198

Powell v. *McCormack*, 395 U.S. 486 (1969) 35, 222

Railway Express Agency v. *New York*, 336 U.S. 106 (1949) 42

Reynolds v. *Sims*, 377 U.S. 533 (1964) 119, 120

Saia v. *New York*, 334 U.S. 558 (1948) 212, 218, 221

San Antonio Ind. School Dist. v. *Rodriquez*, 411 U.S. 1 (1973) 120

Schneider v. *Irvington*, 308 U.S. 147 (1939) 42

Schacht v. *United States*, 398 U.S. 58 (1970) 53

Shakman v. *Democratic Org. of Cook County*, 435 F.2d 267 (7th Cir. 1970) 223

Shelton v. *Tucker*, 364 U.S. 479 (1960) 179, 180, 187, 189

Sherbert v. *Verner*, 374 U.S. 398 (1963) 37, 171

Shuttlesworth v. *Birmingham*, 394 U.S. 197 (1969) 212

Southeastern Promotions, Ltd., v. *Conrad*, 43 L. Ed. 2d 448 (1975) 213

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Speiser v. *Randall*, 357 U.S. 513 (1958) 37, 212, 219

Springer v. *Government of the Philippine Islands*, 277 U.S. 189 (1928) 35, 197

Stapleton v. *Clerk for City of Inkster*, 311 F. Supp. 1187 (E.D. Mich. 1970) 223

Steward Machine Co. v. *Davis*, 301 U.S. 548 (1937) 41

Stoner v. *Fortson*, 379 F. Supp. 704 (N.D.Ga. 1974) 175, 181

Storer v. *Brown*, 415 U.S. 724 (1974) 157, 160, 164

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Stromberg v. *California*, 283 U.S. 359 (1931) 41

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Talley v. *California*, 362 U.S. 60 (1960) 46, 47, 83, 139, 179, 190

Thomas v. *Collins*, 323 U.S. 516 (1945) 48, 147, 191

Thornhill v. *Alabama*, 310 U.S. 88 (1940) 37

Tinker v. *Des Moines Independent Community School District*, 393 U.S. 503 (1969) 52

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United States v. *Germaine*,
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United States v. *Hartwell*,
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United States v. *Maurice*,
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United States v. *M'Cabe*,
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United States v. *National Committee for Impeachment*,
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United States v. *Nixon*,
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United States v. *Stewart*,
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United States v. *Swift*,
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Vanasco v. *Schwartz*,
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Walz v. *Tax Commission*,
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White v. *Snear*,
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Whitney v. *California*,
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Williams v. *Rhodes*,
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Williamson v. *Lee Optical*,
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Zeilinga v. *Nelson*,
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Zorach v. *Clauson*,
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Zwickler v. *Koota*,
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Constitution

Constitution of the United States
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Federal Corrupt Practices Act of 1925 185

Federal Social Security Act of 1935, 49 Stat. 620 41

Subtitle H of the Internal Revenue Code of 1954,
P.L. 92-178, 85 Stat. 562, as amended by Public Law
93-53, 87 Stat. 138, 26 U.S.C. §§ 9001, *et seq.* . . . . . *passim*

Federal Election Campaign Act of 1971,
P.L. 92-225, 86 Stat. 3, 2 U.S.C. §§ 431, *et seq.* . . . . . *passim*

Federal Election Campaign Act Amendments of 1974,
P.L. 93-443, 88 Stat. 1263 . . . . . *passim*

Alabama Unemployment Compensation Law 41

Conn. Gen Stats. Ann §§ 9-381 - 9-452 (1958) 94

28 U.S.C. § 1253 2

28 U.S.C. § 2101 2

28 U.S.C. § 2282 . . . . . 2, 6

28 U.S.C. § 2284 . . . . . 2, 6

31 U.S.C. § 42 205

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Legislative Materials

H. R. 2445, 94th Cong., 1st Sess. (1975) 201

H. Rep. No. 93-1239, 93d Cong.,
2d Sess. (1974) 54, 56, 98, 109, 175

Hearings on H.R. 7612 and S. 372 before the Subcommittee
on Elections of the House Committee on House Administration,
93d Cong., 1st Sess. (1973) 98

S. 200, 94th Cong., 1st Sess. (1975) 218

S. 1390, 94th Cong., 1st Sess. (1975) 151

S. Rep. No. 93-689, 93d Cong., 2d Sess. (1974). . . 108, 112, 127, 161

S. Rep. No. 93-1237, 93d Cong., 2d Sess. (1974) 126

S. Rep. No. 93-170, 93d Cong., 1st Sess. (1973) 55

Statement of Antonin Scalia, Assistant Attorney General,
Office of Legal Counsel, on Executive Agreements
(S. 1251 and S. 632), before the Subcommittee on
Separation of Powers, Committee on the Judiciary,
U.S. Senate May 15, 1975 208

Hearings before the Subcommittee on Privileges and Elections
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S. 1103, S. 1954, S. 2417, S. 3, 93d Cong., 1st Sess. (1973). . . 63

Hearings on S. 23, S. 372 *et al.* before the Subcommittee on
Privileges and Elections of the Senate Committee on
Rules and Administration, 93d Cong., 1st Sess. (1973) . 63, 88, 185

Hearings on S. 372 before the Subcommittee on
Privileges and Elections of the Senate Committee
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H. Doc. No. 252, 75th Cong., 1st Sess., 81 Cong. Rec. 4779 (1937) 199

H. Doc. No. 529, 72d Cong., 2d Sess., 76 Cong. Rec. 2445 (1933) 199

117 Cong. Rec. 146, 163

119 Cong. Rec. 163

120 Cong. Rec.
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Miscellaneous

ACLU 1924 Annual Report 123

ACLU 1928-1929 Annual Report 123

Adamany, *Financing Politics (1969)* 57

Adamany and Agree, *Political Money: A Strategy for Campaign Financing in America* (1975) 58, 60, 166

Alexander, *Financing the 1968 Election* (1971) 97

Alexander, "The Impact of Election Reform Legislation on the Political Party System" (delivered at the 1975 meeting of the American Political Science Association, Sept. 2-5, 1975) 59, 60

Alexander, "The Panic To Reform," Newsweek, Jan. 20, 1975, at 84 74

Alsop, "The Effects of Campaign Finance Reform," Washington Post, Nov. 25, 1974, at A 21, col. 1 75

American Bar Association Special Committee on Election Reform, Report . . . 75, 83, 112, 137, 153, 155, 156-57, 167, 188

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American Bar Association Special Committee on Campaign Reform, Symposium on Campaign Financing Regulation (1975) 103, 111, 113, 158

American Civil Liberties Union, "Questions and Answers About Campaign Finances" . . 75, 83, 112, 118, 160-61, 185, 219

Anderson, *Party Politics in Puerto Rico* (1965) 162

2 Antieau, *Modern Constitutional Law* (1969) 198

Barnard, *This Great Triumvirate of Patriots* (1971) 122

Barrow, "Regulation of Campaign Funding and Spending for Federal Office," 5 Mich. J.L. Reform 159 (1972) 163

"Bipartisan Election Administration –New York City: Pruning the Electoral Thicket," 84 Yale L.J. 61 (1974) 219

Broder, "Campaign Spending Limits," Washington Post, July 27, 1975, at C 6, col. 5 74

Broder, "Campaign Funding Sermon," Washington Post, Aug. 24, 1975, at B 6, col. 5 74

Broder, "The GOP's Financial Loophole," Washington Post, Sept. 14, 1975, at B 6 col. 3 . . . . . 74, 75, 105

1 Campaign Practices Rep. No. 22, (May 19, 1975) 73

2 Campaign Practices Rep. No. 3 (Aug. 25, 1975) 71

CBS News Reference Book-Public Opinion: Changing Attitudes on Contemporary Political and Social Issues (1972) 39

Coit, *Mr. Baruch* (1957) 123

Cole, *Campaign Financing in Senate Elections* (1975) 56-57, 81

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Committee for Economic Development, *Financing a Better Election System* (1968) 145

30 Cong. Q. Wkly. Rep. 2967 (Nov. 11, 1972) 65

32 Cong. Q. Wkly. Rep. 3077 (Nov. 9, 1974) 65

33 Cong. Q. Wkly. Rep. 1961 (Sept. 13, 1975) 77

33 Cong. Q. Wkly. Rep. 1242 (June 14, 1975) 93, 136

Cutler and Johnson, "Regulation and the Political Process," 84 Yale L.J. 1395 (1975) 197, 217

Dickenson, "Political Consultants See Trouble in New Campaign Finance Law," Washington Star, July 31, 1975, at A 1, col. 1 74

Dillin, "Reform Law Pinches U.S. Candidates," The Christian Science Monitor, Jan. 24, 1975, at 1, col. 4 74

Downs, *An Economic Theory of Democracy* (1957) 122

Emerson, *The System of Freedom of Expression* (1970) 112

2 Farrand, *Records of the Federal Convention* (1934 ed.) 195

FEC Notice 1975-18, 40 Fed. Reg. 32951 (Aug. 5, 1975) 203

FEC Notice 1975-27, 40 Fed. Reg. 36242 (Aug. 19, 1975) 93

FEC Notice 1975-34, 40 Fed. Reg. 40668 (Sept. 3, 1975) 206

FEC Notice 1975-40, 40 Fed. Reg. 41933 (Sept. 9, 1975) 216

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FEC Notice 1975-44, 40 Fed. Reg. 42839 (Sept. 16, 1975) 216

FEC Notice of Proposed Rulemaking, 40 Fed. Reg. 23833 (June 2, 1975) 203

FEC Opinion of Counsel letter 1975-48 . . . . . 216, A-2

Fleishman, "Freedom of Speech and Equality of Political Opportunity: The Constitutionality of the Federal Election Campaign Act of 1971," 51 No. Car. L. Rev. 389 (1973) 112, 167

Fleishman, "The 1974 Federal Election Campaign Act Amendments: The Shortcomings of Good Intentions," 1975 Duke L.J. 851 (1975) 95. 168

Freed, "How to Sneak Around the New Campaign-Reform Law," Baltimore Sun, Aug. 17, 1975, at K 3, col. 1 . . . . . 69, 74

Freedman, "Imagine This," New York Times, June 30, 1975, at C 29, col. 1 . . . . . 74, 75

Freeman, "A Remonstrance for Conscience," 106 U. Pa. L. Rev. 806 (1958) 146

Ginnane, "The Control of Federal Administration by Congressional Resolution and Committees," 66 Harv. L. Rev. 569 (1953) 208

Goldfarb, "A Wrinkle in the Campaign Law," Washington Post, Jan. 27, 1975, at A 18, col. 3 74

Hallihan, "The Federal Election Campaign Act Amendment of 1974: The Constitutionality of Limiting Political Advertising by the Non-Candidate," 3 Fla. St. U. L. Rev. 266 (1975) 112

Harris, *Congressional Control of Administration* (1964) 208

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Heard, *The Costs of Democracy* (1960) 57, 59, 62

Heidenheimer, *Comparative Political Finance* (1970) 57, 162

Jackson, "A Presidential Legal Opinion," 66 Harv. L. Rev. 1353 (1953) 208

Kalven, *The Negro and the First Amendment* (1966) 39-40, 43

Kellogg, *NAACP, Volume I: 1909-1920* (1967) 122

Key, *Politics, Parties and Pressure Groups* (5th ed. 1964). 57

Kilpatrick, "Campaign-Law Challenge," Washington Star-News, Dec. 27, 1974, at A 6, col. 1 75

Lader, *The Bold Brahmins* (1961) 122

Lofton, "Candidate Spending Laws," Oceanside Blade Tribune, June 30, 1975 74

Los Angeles Times, July 30, 1975, at I-3, col. 7 74

Los Angeles Times, Aug. 15, 1975, at I 26, col. 1 60

Lydon, "Political Fundraising Is Now Up To Accountants and the Mail," New York Times, April 20, 1975, at E 5, col. 1 74

Malbin, "New Campaign Finance Law Faces Legal, Political Tests," National Journal Reports (July 12, 1975) . . . 132

"Martin Agronsky's Evening Edition," transcript (prepared by the FEC) 218

Mechem, *Public Offices and Officers* (1890) 198

Meiklejohn, "The First Amendment as an Absolute," 1961 Sup. Ct. Rev. 245 40

New York Times, July 21, 1975, at 10, col. 3 . . . . . 60, 138

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Newfield, "The Permanent Incumbent Act," The Village Voice, May 19, 1975, at 12, col. 1 74

Note, Developments in the Law – Elections, 88 Harv. L. Rev. 111 (1975) 155, 175, 178, 184

Note, Payment of State Funds to Political Party Committees for Use in Meeting Campaign Expenses Lacks a Public Purpose, 78 Harv. L. Rev. 1260 (1964) . 145, 155, 175

11 Ops. Att'y Gen. 209 (1865) 200

18 Ops. Att'y Gen. 409 (1886) 200

37 Ops. Att'y Gen. 56 (1933) 199

39 Ops. Att'y Gen. 61 (1937) 199

Overacker, *Money in Elections* (1932) 57

Padover, *The Complete Jefferson* (1942) 146

Phillips, *Mediacracy* (1975) 126

Polsby and Wildavsky, *Presidential Elections* (1968) 57

Redish, "Campaign Spending Laws and the First Amendment," 46 N.Y.U.L. Rev. 900 (1971) 112

Richardson, *Messages and Papers of the Presidents* (1896-99), VIII 199

Roche, "Reforms Require Reforming," Advance, June 24, 1975 . . . . . 74, 75

Rosenthal, "Campaign Financing and the Constitution," 9 Harv. J. Legis. 359 (1972) . . . 113, 121, 153, 157, 159, 175, 212

Rosenthal, *Federal Regulation of Campaign Finance: Some Constitutional Questions* (1971) 111, 112

Sassoon, "The Funding of Political Parties in Italy," 46 The Political Quarterly 94 (1974) 162

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Schwartz, *Public Financing of Elections: A Constitutional Division of the Wealth* (1975) 155, 156

Sorauf, *Political Parties in the American System* (1964) 178

Steeg, *Robert Morris: Revolutionary Financier* (1954) 122

Strickland, *History of the Chicago Urban League* (1966) 122

Telser, *Advertising and Competition*, Journal of Political Economy (Dec. 1964) 97

Thach, *The Creation of the Presidency, 1776-1789* (1969) 194, 208

The Center Magazine (Nov.-Dec., 1974) 137

The Federalist, Cooke ed. 1961 . . . . . *passim*

von Hoffman, "Bread and Circuses," Washington Post, Aug. 1, 1975, at D 1, col. 1 74

Wall Street Journal, June 2, 1975, at 5, col. 1 101

Wall Street Journal, June 3, 1975, at 15, col. 9 102

Walters, "New Wrinkles in Corporate Fund Raising," National Journal Reports (Sept. 6, 1975), 1283 71

Washington Post, Sept. 15, 1975, at A 1, col. 1 60

Washington Post, Aug. 26, 1975, at A 3, col. 1 59

Washington Post, June 1, 1975, at A 9, col. 1 102

Washington Post, June 4, 1975, at A 8, col. 1 102

Watson, "Congress Steps Out; A Look at Congressional Control of the Executive," 63 Cal. L. Rev. 983 (1975) . 201, 208, 209

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Will, "The Limits of Campaign Spending Limitations," Washington Post, Jan. 14, 1975, at A 15, col. 1 74

Witcover, "New Law May Hurt Longshot Candidates' Fund-Raising," Washington Post, April 13, 1975, at A 4, col. 1 74

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

Nos. 75-436 and 75-437

JAMES L. BUCKLEY, *et al.*,

Appellants,

v.

FRANCIS R. VALEO, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF OF THE APPELLANTS

JUDGMENT, DECISION, AND OPINIONS BELOW

The majority, concurring, and dissenting opinions and order of the Court of Appeals rendered August 15, 1975, are not yet officially reported. They are printed as Appendix A to appellants' Jurisdictional Statement filed in the appeal from the Court of Appeals' decision.

The judgment of the District Court entered August 15, 1975, is not yet officially reported. It is printed as Appendix A to appellants' Jurisdictional Statement filed in the appeal from the District Court's judgment.

JURISDICTION

The Court of Appeals had jurisdiction of the constitutional questions certified to it pursuant to 2 U.S.C. § 437h(a). Jurisdiction of the appeal from the decision rendered by the Court of Appeals is conferred on this Court by 2 U.S.C. § 437h(b), which provides:

> "Notwithstanding any other provision of law, any decision on a matter certified under subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States."

Section 437h(c) provides:

> "It shall be the duty of the court of appeals and of the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter certified under subsection (a)."

The United States District Court for the District of Columbia had jurisdiction over the constitutional challenge to Subtitle H by virtue of 26 U.S.C. § 9011(b) and 28 U.S.C. §§ 2282, 2284. This Court has jurisdiction over the appeal from its judgment by virtue of 28 U.S.C. §§ 1253, 2101.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions involved in this appeal are:

Article I, Section 4:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of Chusing Senators."

Article I, Section 8, clause 1:

> "The Congress shall have Power To . . . provide for the . . .general Welfare of the United States . . . ."

Article II, Section 2, clause 2:

> " . . . He [the President] . . . shall nominate, and by and with the Advice and Consent of the Senate shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments."

Amendment I:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Amendment IV:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Amendment V:

"No person shall be . . . deprived of life, liberty, or property, without due process of law . . . ."

Amendment IX:

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

The statutes involved in this appeal are the Federal Election Campaign Act of 1971, Public Law 92-255, 2 U.S.C. §§ 431 *et seq.*, as amended by the Federal Election Campaign Act Amendments of 1974, Public Law 93-443, including amendments to the criminal code (all referred to herein as FECA); and Subtitle H of the Internal Revenue Code of 1954, Public Law 92-178, 26 U.S.C. §§ 9001 *et seq.*, as amended by Public Law 93-53, 87 Stat. 139, and as further amended by the Federal Election Campaign Act Amendments of 1974.

The particular provisions of these statutes whose constitutionality is at issue are those listed in the certified constitutional questions, set out at pp. 1582-86 of Appendix A to the Jurisdictional Statement filed in the appeal from the decision of the Court of Appeals. The text of the statutes is contained in Volume III of the Appendix to the briefs herein.

QUESTIONS PRESENTED

1. Did the Court of Appeals correctly conclude that the limitations imposed by FECA on expenditures by political candidates and organizations are constitutional?

2. Did the Court of Appeals correctly conclude that the limitation imposed by FECA on expenditures by any person relative to a clearly identified candidate are constitutional?

3. Did the Court of Appeals correctly conclude that the limitations imposed by FECA on contributions to political candidates and organizations are constitutional?

4. Did the Court of Appeals correctly conclude that the disclosure requirements imposed on political candidates, organizations and individuals by FECA are constitutional?

5. Did the courts below correctly conclude that the public financing provisions of FECA and Subtitle H of the Internal Revenue Code are constitutional?

6. Did the Court of Appeals correctly conclude that the method provided by FECA for appointing members of the Federal Election Commission is constitutional?

7. Did the Court of Appeals properly decline to decide whether certain powers conferred upon the Federal Election Commission by FECA are constitutional?

8. Are the powers conferred upon the Federal Election Commission by FECA constitutional?

A more detailed statement of the questions presented, as certified from the District Court to the Court of Appeals, is found at pp. 1582-86 of Appendix A to the Jurisdictional Statement filed in the appeal from the decision of the Court of Appeals.

STATEMENT OF THE CASE

A. *History of the Proceedings*[1]

This action was filed by appellants on January 2, 1975, the first day after the effective date of the Federal Election Campaign Act Amendments of 1974. The First Amended Complaint (App. I-36-73)[2] seeks declaratory and injunctive relief against certain provisions of the Federal Election Campaign Act of 1971, P.L. 92-225, 86 Stat. 3, 2 U.S.C. §§ 431 *et seq.* (hereinafter, as amended, the FECA), the Federal Election Campaign Act Amendments of 1974. P.L. 93-443, 88 Stat. 1263 (hereinafter the FECA Amendments), and Subtitle H of the Internal Revenue Code of 1954, P.L. 92-178, 85 Stat. 562, as amended by P.L. 93-53, 87 Stat. 138, 26 U.S.C. §§ 9001 *et seq.*, and by the FECA Amendments (hereinafter Subtitle H). Appellants requested convocation of a three-judge court under 28 U.S.C. §§ 2282 and 2284 and certification to the Court of Appeals under 2 U.S.C. § 437h.

On January 24, 1975, District Judge Corcoran denied appellants' request for a three-judge court and certified the action to the Court of Appeals, stating:

> "The Court specifically finds that the plaintiffs raise substantial constitutional questions . . . ."

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[1] A fuller history of the proceedings is found in Appendix B to the Court of Appeals' opinion (op. at 1586-89).

[2] The Appendix is being filed in three volumes. Volume I (cited as App. I-) contains pleadings and other materials designed by the parties. Volume II (cited as App. II-) contains the District Court's Recertification Decision of May 19, 1975, consisting mostly of findings of fact. Volume III (cited by statutory section) contains the relevant statutes. In addition, for the convenience of the Court, appellants are lodging ten copies of the District Court's Recertification Decision, the same material covered by Volume II of the Appendix.

Buckley v. *Valeo*, 387 F. Supp. 135, 142 (D.D.C. 1975) (App. I-34).

On February 10, 1975, appellees moved to remand the case to the District Court and made suggestions for further proceedings, involving principally the severing of constitutional issues relating to Subtitle H from appellants' other constitutional challenges.

The Court of Appeals instituted fact-finding procedures on March 14, 1975, and on April 14 granted appellees' Motion for Remand (App. I-78-85). The District Court was instructed to frame the constitutional issues in the case, to engage in fact-finding procedures where necessary, and to return the record to the Court of Appeals by May 19, 1975. Subsequently, a three-judge District Court was convened (App. I-86-87); both that court and the Court of Appeals were to decide Subtitle H issues in order to ensure jurisdiction on appeal in this Court. Extensive discovery was had in the District Court.

Judge Corcoran issued his findings of fact, App. Vol. II, on May 19, 1975, and returned the record to the Court of Appeals. The District Court also certified the constitutional questions raised by the First Amended Complaint (App. II-754-60).

Oral argument was heard simultaneously by the Court of Appeals and the three-judge court on June 13. The decision and judgment below were issued on August 15, with the three-judge court adopting those portions of the Court of Appeals' decision pertaining to Subtitle H. These appeals followed.

B. *The Challenged Statutes*

(1) *Limits on Campaign Expenditures*

Candidates for nomination for the Presidency may not spend in excess of $10 million in pursuit of that nomination. The total spent in any one state may not exceed twice the expenditure limit applicable in that state to a candidate for nomination for election to the Senate. *Id.*, § 608(c) (1) (A). The Federal Election Commission (FEC) is to prescribe rules under which expenditures by candidates for nomination for the Presidency in two or more states are allocated for purposes of this provision. *Id.*, § 608(c) (4). No general-election candidate for President may spend in excess of $20 million. *Id.*, § 608(c) (1) (B).

Candidates for nomination for election to the Senate may not make expenditures in excess of 8 cents multiplied by the state's voting-age population or $100,000, whichever is greater. *Id.*, § 608(c) (1) (C). No general-election candidate for the Senate may spend in excess of 12 cents multiplied by the state's voting-age population or $150,000, whichever is greater. *Id.*, § 608(c) (1) (D).

In states with only one member in the House of Representatives, the Senate spending limits apply. *Id.*, §608(c) (1) (C)-(D). In all other House elections, no candidate may spend in excess of $70,000 in pursuit of the nomination or in excess of $70,000 in the general election. *Id.*, § 608(c) (1) (E).

Candidates may spend an additional 20 percent of the applicable spending limits for purposes of fund raising. *Id.*, § 591(f) (4) (H).

Expenditure is defined as "a purchase, payment distribution, loan, advance, deposit, or gift of money or anything of value . . . made for the purpose of influencing

the nomination for election, or election . . . ," but certain enumerated items are excepted, *id.*, § 591(f).

Section 9008 of the Internal Revenue Code of 1954 (hereafter I.R.C.) limits to $2 million the expenditures of party national committees with respect to each presidential nominating convention. The FEC may authorize an exception to this limit if it determines that "due to extraordinary and unforeseen circumstances" greater expenditures "are necessary to assure the effective operation" of such conventions, I.R.C. § 9008(d) (3).

The national committee and state committees of a political party may make expenditures in general election campaigns for federal office. National committee expenditures are limited to 2 cents multiplied by the voting-age population of the United States in the general election for President, *id.*, § 608(f) (2). A national or state committee may also spend up to 2 cents multiplied by the voting-age population of the state or $20,000, whichever is greater, in an election to the office of Senator or at-large Representative. Such committees may also spend up to $10,000 in an election to the office of Representative, *id.*, § 608(f) (3).

Limitations on expenditures are enforced by criminal sanctions. 18 U.S.C. § 608(i); I.R.C. § 9012.

All limits on expenditures are adjusted to changes in the Consumer Price Index. 18 U.S.C. § 608(d); I.R.C. § 9008(b) (5).

(2) *Limits on Independent Expenditures*

Section 608(e), 18 U.S.C., prohibits expenditures in excess of $1,000 during a calendar year by any person (defined by *id*, §591(g) to include individuals, committees and groups), "relative to a clearly identified candidate" and "advocating the election or defeat of such candidate."

(3) *Limits on Contributions*

No person, as defined by 18 U.S.C. § 591(g), may contribute in excess of $1,000 to any candidate for federal office. *Id.*, § 608(b) (1). Political committees which have been registered for six months, have received contributions from more than fifty persons and have contributed to five or more candidates for federal office may make contributions to individual candidates for federal office up to $5,000 each. *Id.*, § 608(b) (3).

Candidates may not spend personal funds or the funds of their immediate families in excess of $50,000 in the case of a candidate for President, $35,000 in the case of a candidate for the Senate, and $25,000 in the case of a candidate for the House. *Id.*, § 608(a).

Contribution is defined as "a gift, subscription, loan, advance, or deposit of money or anything of value . . . made for the purpose of influencing the nomination for election, or election . . . ." All bank loans made "in the ordinary course of business" are considered a loan by each endorser or guarantor in proportion to his total commitment to the entire loan. *Id.*, § 591(e). Exceptions to the definition of *contribution* are enumerated in *id.*, § 591(e) (5).

Certain incidental out-of-pocket expenses incurred by volunteers in excess of $500 constitute a contribution. *Id.*, § 591(e) (5).

Limits on contributions are enforced by criminal penalties, *id.*, § 608(i). These limits, unlike the limits on expenditures, are *not* adjusted to changes in the Consumer Price Index.

(4) *Federal Subsidies in Presidential Elections*

Section 9006, I.R.C., establishes a Presidential Election Campaign Fund composed of moneys transferred to that Fund by the Secretary of the Treasury not in excess of

the sum of amounts designated by individuals under the tax checkoff provided in Section 6096. Individual and joint taxpayers may designate $1 and $2, respectively, to be transferred to the Fund. Individuals may not designate either their party or their candidate preferences.

The first priority for the distribution of federal funds is the subsidization of the nominating conventions. Amounts remaining are used to provide financial support to candidates in the general election. Any amounts which are available and are not expended for these priority purposes are distributed to candidates for the presidential nomination of a political party. §§ 9037(a), 9008(a). The Secretary of the Treasury estimates the amount of money to be kept aside for the general election. § 9006(d). Once money is put aside for the nominating conventions and the general election, distribution is made to eligible primary candidates. The Secretary must make an "equitable distribution" among candidates for nomination of the same party, taking into account the sequence in which candidates become eligible. § 9037(b).

Section 9008(b) provides $2 million for major-party nominating conventions and an amount to minor parties (those receiving between 5 and 25 percent of the popular vote in the preceding election, § 9002(7)), proportionate to the popular vote they received in that election.

In the general election, the subsidy is divided evenly between major-party candidates, each receiving $20 million, if available. § 9004(a) (1). Minor-party candidates receive amounts proportionate to the popular vote they received in the preceding election. § 9004(a) (2). New parties[3]

[3] The statute defines "new party" to include not only parties which have recently been created, but also all third parties previously in existence which received less than 5 percent of the popular vote in the preceding presidential general election. I.R.C. § 9002(8). Appellants will use the term as the statute defines it.

are entitled to subsidies *after* a general election in proportion to the vote received in that election, if over 5 percent.[4] § 9004(a) (3). To be eligible for any funds, candidates must qualify to have their names (or the names of electors pledged to them) on the election ballot as the candidate of a political party in 10 or more states. § 9002(2).

A candidate for nomination by a political party for election to the Presidency is eligible to receive matching primary payments if he raises private contributions of $5,000 from residents of each of at least 20 states in amounts of $250 or less. §§ 9037, 9033(b).

(5) *Reporting and Disclosure*

Political committees, as defined by 2 U.S.C. § 431(d), must keep detailed records of the identities of all individuals who contribute more than $10 to them, subject to audit by the FEC. *Id.*, §§ 432(b)-(d) and 438(a)-(d). Political committees and candidates are further required to file periodic reports disclosing the names, occupation, and principal places of business of those who contribute in excess of $100. *Id.*, § 434(b) (1)-(8). Certain resources available to incumbent officeholders, enumerated in *id.*, § 434(d) are not, however, required to be disclosed.

Every person who contributes or expends more that $100 per year other than by contribution to a political committee or candidate (including persons who make "independent expenditures," see p. 8, *supra*, and volunteers with incidental expenses exceeding $600) must also file a report with the FEC disclosing the same information required of political committees and candidates. *Id.*, § 434(e).

Criminal penalties are provided for violation of the disclosure provisions. *Id.*, § 441. Candidates who fail to

[4] Such post-election subsidies are apparently limited to amounts needed to repay outstanding debts, see *infra*, pp. 154-55 n. 12.

file required reports are barred from seeking federal office for a specified number of years. *Id.*, § 456.

Persons (other than individuals) who expend funds or take any action directed at the public designed to influence the outcome of elections or voters' choices, or who publish or broadcast any material referring to a candidate advocating his election or defeat, or setting forth a candidate's voting record or positions on public issues, or who take any action otherwise intended to influence voters, must file reports with the FEC as if such persons were political committees, *id.*, § 437a.[5] Exempt from the statute are certain publications or broadcasts, but certain other publications or broadcasts are not exempted, *id.*

(6) *Federal Election Commission*

The Federal Election Commission (FEC) is composed of six members: two appointed by the president *pro tem* of the Senate on the recommendations of the Senate majority and minority leaders, two appointed by the Speaker of the House on the recommendations of the House majority and minority leaders, and two appointed by the President. All six must be confirmed by a majority of both Houses. 2 U.S.C. § 437c(a) (1).

The FEC has broad powers. It may, *inter alia:* (a) investigate violations and issue subpoenas; (b) exercise primary jurisdiction with regard to civil enforcement of the FECA: (c) refer violations to the Attorney General, who "shall institute a civil action for relief"; (d) formulate general policy with respect to the administration of the FECA, including certain provisions of the criminal code; (e) render advisory opinions; (f) make rules to implement the FECA, *id.*, §§ 437d, 437g.

[5] This section was held unconstitutional by the Court of Appeals (op. at 1549-60), and no appeal from that holding has been filed.

Either the FEC or the Attorney General may bring civil actions (including proceedings for injunctions) against any person who "has engaged, or is about to engage in any acts or practices which" violate the FECA, including certain sections of the Criminal Code, *id.*, § 437g (a).

Any proposed rule or regulation dealing with reports or statements required of Senate or House candidates or committees supporting such candidates must be transmitted to the Senate or the House, respectively. If the House or the Senate, as the case may be, does not disapprove the proposed rule or regulation within 30 legislative days, the FEC may prescribe it. Rules and regulations relating to required reports or statements by presidential candidates or committees supporting such candidates go to both houses and *either* may disapprove any such proposal within 30 legislative days. *Id.*, § 438(c). If the FEC finds that a candidate for federal office has not filed required reports, such person shall be disqualified from candidacy in future federal elections until one year after the expiration of the term of the office he was seeking. *Id.*, § 456.

C. *The Appellants*

1. *James L. Buckley*

James L. Buckley ran for the United States Senate unsuccessfully in 1968 on the New York Conservative Party ticket. He ran again and won on that ticket in 1970. He proposes to run for a second six-year term next year. Findings III, Buckley 1-4, pp. 1-2; App. II-700-01.[6]

[6] All references to the District Court's Findings of Fact, as included in that court's Recertification Decision of May 19, 1975, will be cited in two forms. The Roman numeral will identify the appropriate section of the District Court findings. The number or numbers following the Roman numeral will identify the particular finding or findings cited to (and in the case of all findings from Part III, will include the name of the affiant and/or

(continued)

Buckley's 1970 campaign received substantial amounts in individual contributions greater than $1,000 early in the campaign, and he believes that without such money he could not have run successfully. *Id.*, Buckley 14, 16-19, pp. 4-5; App. II-703-04. Buckley's 1970 campaign raised over $1,800,000. *Id.*, Buckley 17, p. 5, App. II-703. In 1968 and 1970 Buckley relied heavily on volunteer support. Many of these volunteers, approximately 15,000 in 1970, personally defrayed many of their expenses. *Id.*, Buckley 24, p. 7; App. II-705.

Buckley desires to be a member of the majority of the Senate, and he believes that his capacity to affect legislation depends on whether 20 to 30 present incumbents can be defeated. *Id.*, Buckley 35-36, p. 9; App. II-707.

In future campaigns, Buckley desires to make expenditures, to accept contributions, to accept the assistance of volunteers with incidental expenditures, and to preserve the option of making personal and family expenditures, all in excess of the Act's limits; he further desires to accept contributions without making all the disclosure required by the Act. He desires that persons supporting him make independent expenditures exceeding those permitted by the Act. He believes that he will be harmed by these restrictions of the Act. Buckley aff. ¶¶ 20, 28, 30, 40. He also believes that he will be harmed by public financing of presidential elections. Buckley dep. tr. 80-82.

[6] (continued)
deponent from whose affidavit or testimony the findings were derived). The first set of page numbers identifies the pages of the District Court findings as transmitted by that court to the Court of Appeals and lodged with the Court in ten Xerox copies. The "App. __" page citation identifies the pages of the printed Appendix where the findings can be located.

2. *Conservative Party of the State of New York*

The Conservative Party of the State of New York (the Party), established in 1962, has nominated and intends to nominate candidates for the Presidency, U.S. Senator from New York and members of the U.S. House of Representatives from all or nearly all of New York's congressional districts. The Party and affiliated committees register and file reports under the FECA. Findings III, Mahoney 2-4, p. 11; App. II-708-09.

The Conservative Party has solicited and received individual contributions in excess of $1,000 toward the election of its candidates, and desires to do so in 1976. *Id.* The Party intends in the future to contribute in excess of $5,000 to as many of its candidates for federal office as it is able, to expend, if possible, an amount in excess of 2 cents multiplied by New York's voting-age population for its Senate candidate, and to expend in excess of $10,000 for many candidates for the House. *Id.*, Mahoney 7, pp. 12-13; App. II-710. The Party may choose a candidate who can and wishes to expend personal funds in excess of the FECA's limitations. Mahoney aff. ¶ 6. The Party believes that it will be harmed by the subsidy provisions of Subtitle H. *Id.*, ¶¶ 7-8.

During the Party's petition drive in 1962 to establish itself as a political party under New York law, a campaign of harassment was directed at persons who signed the petition. Findings III, Mahoney 8, p. 13; App. II-710.

3. *Eugene J. McCarthy*

Eugene J. McCarthy, a former Senator from Minnesota, is an independent candidate for the Presidency in 1976. His candidacy has no tie to any political party. Findings III, McCarthy 1, p. 17; App. II-712-13.

In his independent candidacy McCarthy and the Committee for a Constitutional Presidency—McCarthy '76 (the

Committee), which is supporting him, are seeking to place his candidacy on the ballot in all 50 states and the District of Columbia. His candidacy involves no primary elections, caucuses, or conventions, and the Committee does not plan to hold a nominating convention. *Id.*, McCarthy 2, p. 17; App. II-713.

In 1968, when he ran for the Democratic presidential nomination, McCarthy received individual contributions in excess of $1,000 and support from many volunteers who gave freely of their time and effort, meeting most of their expenses out of their own pockets. *Id.*, McCarthy 4, 11, pp. 18, 20; App. II-714-15. He has received individual contributions in excess of $1,000 for his 1976 campaign. *Id.*, McCarthy 23, 31, pp. 22-23; App. II-717-18.

McCarthy anticipates considerable informal and unstructured activity by volunteers supporting his 1976 candidacy. *Id.*, McCarthy 19, p. 22; App. II-717. In his current campaign individuals have hesitated to support him financially for fear of the consequences of disclosure of their names. McCarthy dep. tr. 17-18, 67-70. McCarthy believes that the Federal Election Commission, because of its method of appointment and its bi-partisan nature, will not look favorably on independent campaigns. McCarthy aff. ¶ 23.

4. *Committee for a Constitutional Presidency—McCarthy '76*

The Committee for a Constitutional Presidency—McCarthy '76 (the Committee) is a registered political committee under the FECA. It supports the presidential candidacy of plaintiff McCarthy. It plans to engage in legal challenges to state laws which prevent independent candidacies from listing on the ballot. The time and expense involved are problems unique to candidates running outside the two major parties. Findings III, Monroe 2-4, p. 24; App. II-719-20.

The Committee anticipates a need to raise in excess of $24 million for the 1976 presidential campaign. Monroe aff. ¶ 13; Monroe dep. tr. 44. It believes it is impeded by the Act's limitations on individual and organization contributions, Monroe aff. ¶¶ 8, 9, on campaign expenditures, *id.*, ¶ 11, and on volunteer expenses. *Id.*, ¶¶ 14-15. The Committee believes that Subtitle H discriminates against its candidate. *Id.*, ¶¶ 20-21. The Committee desires that its candidate make expenditures, accept contributions, and accept the assistance of volunteers with incidental expenses, all in excess of the Act's limits; it further desires to accept contributions without making disclosure under the Act. It desires that persons supporting its candidate make independent expenditures exceeding those permitted by the Act. It believes that it will be harmed by these restrictions and by the public-financing provisions. *Id.*, ¶¶ 8-17, 20-25.

5. *Stewart R. Mott*

Stewart R. Mott has since 1963 been engaged in supporting political and social movements and certain candidates for political office. Findings III, Mott 1-3, p. 26; App. II-721.

Mott was particularly active in the Vietnam protest movement, supporting candidates who favored extrication of the United States from Vietnam, and making independent efforts to affect public policy. In 1968 Mott worked as a volunteer for Eugene McCarthy's nomination for President, gave over $200,000 to that effort, and spent several thousand dollars of his own unreimbursed money for travel, telephone, etc., in connection with political campaigns. He paid for newspaper advertisements to encourage Nelson Rockefeller to present himself as a Republican alternative to Richard Nixon. Mott contributed well in excess of $1,000 to an authorized Rockefeller presidential committee. *Id.*, Mott 4-8, pp. 26-27; App. II-721-22.

After 1968 Mott became a member of the National Committee for an Effective Congress (NCEC), and worked with that group to elect candidates for Congress. In 1970 Mott organized "Peace, Inc.," and donated over $30,000 to Congressional candidates supporting U.S. withdrawal from Vietnam. Beginning in 1971 he made financial contributions to George McGovern totaling well over $350,000. Mott also incurred some $50,000 for personal expenses on McGovern's behalf in 1972. Through the 1972 campaign Mott financed independent political activities critical of Edmund Muskie and Richard Nixon. In 1972 Mott contributed to candidates for the House and Senate, both incumbents and non-incumbents. Sixteen of these contributions were in excess of $1,000. *Id.*, Mott 9-18, pp. 28-30; App. II-722-25.

In future elections, Mott desires to make contributions, to make incidental expenses as a volunteer, and to make independent expenditures, all exceeding the Act's limits. He believes he and his political goals will be harmed by these restrictions. Mott aff. ¶ 31.

6. *William A. Steiger*

William A. Steiger represents Wisconsin's Sixth Congressional District in the House of Representatives, and has done so since 1967. He is considering a candidacy for federal office in 1976; it is possible that he will be a candidate for the U.S. Senate. Steiger believes that the Act will enhance his chances of reelection to the House and—by the same token—will severely hinder his ability to challenge the candidacy of one of his state's incumbent Senators. Findings III, Steiger 1, p. 33; App. II-727-28.

In 1966 Steiger received contributions of $4,000 each from his father and from the Wisconsin Republican Party. *Id.*, Steiger 19-20, p. 39; App. II-732. Steiger desires to spend the amounts necessary and available to convey his views to

the citizens meaningfully. If unable to do so, he believes that his campaign will be injured and the political efficacy of his supporters impaired. Steiger aff. ¶ 33.

7. *New York Civil Liberties Union*

New York Civil Liberties Union (NYCLU) is an affiliate of the American Civil Liberties Union (ACLU); its Executive Director is Ira Glasser. Findings III, Glasser 1, p. 41; App. II-733.

NYCLU, as a principal function, disseminates within New York State information concerning constitutional rights. NYCLU is barred by the ACLU's constitution from endorsing or opposing candidates for public office. However, NYCLU, among other activities, frequently criticizes public officials whose conduct it believes violates civil liberties. *Id.*, Glasser 2-3, p. 41; App. II-733-34. NYCLU takes frequent and controversial positions on public issues. Glasser aff. ¶ 3, Glasser dep. tr. 120. NYCLU praises, criticizes, describes and rates the conduct of clearly identified public officials who may be candidates for federal office. Findings III, Glasser 4, pp. 41-42; App. II-734. NYCLU has bought newspaper advertisements costing more than $1,000 critical of then-Governor Rockefeller with respect to Attica, critical of then-President Nixon with respect to school busing, and critical of President Ford for pardoning Mr. Nixon. Glasser intends to publish other similar advertisements. Glasser aff. ¶¶ 5-10; Glasser dep. tr. 16, 92, 110, 117, 126.

NYCLU published a membership newsletter approximately six times a year, at a cost exceeding $1,000 per issue, delineating NYCLU's views on public issues and the positions taken on such issues by public officials, some of whom are candidates for federal office. Findings II, Glasser 5-8, p. 42; App. II-734-35.

8. *Mississippi Repubican Party*

The Mississippi Republican Party (the Party) is part of the national Republican Party. The Party has nominated and intends to nominate candidates for the Presidency, U.S. Senator, and members of the U.S. House of Representatives. Findings III, Reed 1, p. 48; App. II-738-39.

In 1972 the Party's State Central Committee voted not to solicit, receive, or expend money on behalf of candidates for federal office because it opposed in principle the requirements imposed by the FECA. *Id.* The Central Committee will not contribute over $1,000 to any future candidate for federal office in order to protect the confidentiality of its contributors. *Id.*, Reed 3, p. 49; App. II-739 Many Party members fear that they would suffer adverse consequences from disclosure of their political contributions. *Id.*, Reed 8, p. 49; App. II-740. One consequence has been that the Party has received a large number of $99 contributions. *Id.*, Reed 11; Reed dep. tr. 31-32.

Some Mississippi Republicans have contributed more than $1,000 to Party candidates for federal office. Prior to the FECA, the Party contributed directly to candidates for federal office, including, in some cases, contributions in excess of $5,000. *Id.*, Reed 10-13, p. 50; App. II-740-41. The Party's basic fund-raising system, accounting for two-thirds of the funds used to run its base operations, is a bank-draft system, which raises, from monthly $10 contributions, yearly individual contributions exceeding $100. *Id.*, Reed 7, 9, pp. 49-50; App. II-740.

Only one Party candidate for federal office has beaten an incumbent, in a 1964 House race. *Id.*, Reed 16, p. 51; App. II-741-42.

In future campaigns, the Party desires to make expenditures on behalf of its candidates, to have its candidates make expenditures, to have its candidates accept

contributions, and to have its candidates expend personal or family funds all in excess of the Act's limits; it further desires that it and its candidates accept contributions without making the disclosure required by the Act. It desires that no public funds be spent on presidential elections. The Party believes it will be harmed by the provisions of the Act mentioned above. Reed aff. ¶¶ 10-12, 15-18, 20-23, 27-44.

9. *Conservative Victory Fund*

The Conservative Victory Fund (CVF) is a registered political committee under the FECA, affiliated with the American Conservative Union (ACU). CVF and ACU have most of their officers in common, they share office space, and they work on common matters in some cases. CVF was established in 1970 to raise funds to aid the election of conservative candidates for public office. CVF itself pays no salaries. Findings III, Roberts 1-4, p. 52; App. II-742.

In 1970, 1972, and 1974 CVF contributed in excess of $5,000 to each of certain candidates for federal office, including both challengers and incumbents. In these three election campaigns CVF contributed a total of approximately $370,000 to the campaigns of 179 candidates for the House and Senate. *Id.*, Roberts 7-8, pp. 53-54; App. II-743-44.

CVF is not connected to any political party, and it does not now plan to form a new political party. *Id.*, Roberts 12, 15, pp. 54-55; App. II-744. However, a new political party is being discussed among conservatives, and if such a party is formed, it is possible that CVF would be involved in raising funds for a nominating convention and a campaign for President. Roberts dep. tr. 42-43.

CVF believes that the limitations the Act places on contributions by political committees, single and aggregate contributions by individuals, expenditures of family or personal funds by a candidate, and overall expenditures by

a candidate will harm it. CVF desires to receive the maximum amount of money it can from individuals, and to continue to contribute to conservative challengers to incumbent officeholders. Roberts aff. ¶¶ 8, 16, 18; Roberts dep. tr. 12-17, 34-35.

10. *American Conservative Union*

The American Conservative Union (ACU), established in 1964, has made contributions to candidates for federal office, including one $2,500 contribution. Findings III, Joy 1, 3, 12, pp. 59, 61; App. II-747-49. ACU desired to contribute to that candidate as much as its resources permitted. Joy dep. tr. 7-8, 11-12.

ACU has engaged in lobbying activities, and it publishes annual ratings of all members of Congress. These ratings list voting records, showing positions on issues of interest to ACU. ACU also distributes statements on its positions with respect to public issues and political candidates. Findings III, Joy 4-6, p. 60; App. II-748.

ACU believes that limitations on contributions by political committees, and other provisions of the Act, severely decrease ACU's ability to make its views effective. Joy aff. ¶ 4; Joy dep. tr. 21-22.

11. *HUMAN EVENTS, INC.*

HUMAN EVENTS, INC., publishes a weekly newspaper dealing primarily with events of political importance and with public issues, public officials, and candidates. Findings III, Winter 1-2, p. 56; App. II-745.

HUMAN EVENTS each election year discusses selected electoral contests of interest to its readers. HUMAN EVENTS has also published articles on various presidential candidates. HUMAN EVENTS endorses

explicitly or by implication certain candidates for federal office. *Id.*, Winter 3-5, 8, pp. 56-58; App. II-745-47.

12. *Libertarian Party*

The Libertarian Party (the Party) was formed in December, 1971, and held its first nominating convention in June, 1972. Its nominee for President, although on the ballot in only two states, traveled extensively and received one vote in the electoral college. The ticket's popular vote was approximately 10,000. By 1974 the Party membership had grown to 5,000 individuals. Major campaigns were run in 1974 in several federal elections. The Party is now organized in 40 states. Findings III, Crane 2-5, pp. 63-64; App. II-750-51.

The Party estimates that it has received approximately 10 individual contributions exceeding $1,000. Approximately five other individuals have indicated that they would contribute more than $1,000. *Id.*, Crane 7-9, pp. 64-65; App. II-751-52.

In its future campaigns the Party desires that its candidates make expenditures, accept contributions, and accept the assistance of volunteers with incidental expenses, all in excess of the Act's limits; it further desires that its candidates accept contributions without making the disclosure required by the Act. It desires that persons supporting its candidates be able to make independent expenditures exceeding the Act's limits. It believes that it will be harmed by these restrictions and by the public-financing provisions. Crane aff. ¶¶ 10-11.

D. *Decision of the Court of Appeals*

Relying heavily on what it perceived as the public's perception of corruption in government, the majority found ample justification for congressional attempts to reform the electoral process. In particular, the majority found a "compelling need" for equalizing the power of citizens to influence the course and outcome of elections and for restricting the political influence of wealth (op. at 1510-20).

On the basis of such considerations the majority, without further significant constitutional discussion, approved the limitations on contributions, expenditures, and independent expenditures (op. at 1528-41).

The majority also upheld the constitutionality of the disclosure provisions of the challenged legislation, holding that the disclosure thresholds are not too low and that the showing in the record of chilling effect on and harassment of minor parties and their contributors is insufficient to overcome the presumption of constitutionality of disclosure as applied to independent and minor-party candidates (op. at 1541-49). [7]

The majority held that the Congress may constitutionally appropriate public funds for the support of partisan political activities in the conduct of presidential nominating conventions and campaigns, and that the formulas for distribution of the moneys chosen by Congress in Subtitle H do not unconstitutionally discriminate against minor and new parties and independent candidacies. The majority further held that four-year-old voting patterns were permissible as means for determining the entitlement to federal funds (op. at 1560-70).

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[7] However, the Court unanimously invalidated the provision for disclosure by "certain persons" other than political groups, 2 U.S.C. §437a, a ruling from which no appeal has been taken by the appellees.

Finally, the majority upheld the method of appointment and some of the powers of the Federal Election Commission. The constitutionality of some of the principal enforcement, supervisory, and investigatory powers of the Commission were found not ripe for decision (op. at 1570-80).

Chief Judge Bazelon dissented with respect to the constitutionality of disclosure of campaign contributors to nascent political parties. Judge Bazelon would have held that such compelled disclosure by minor and new parties impermissibly intrudes upon basic rights of associational privacy as guaranteed by the First Amendment (op. at 1593-97).

Judge Tamm, joined by Judge Wilkey, dissented from the Court's holdings with respect to the constitutionality of contribution and expenditure limitations, the financing of federal elections by the means established in Subtitle H, and the powers and method of appointment of the Federal Election Commission (op. at 1598-1609).

In a separate opinion Judge MacKinnon also dissented with respect to the powers and method of appointment of the Commission (op. at 1609-23).

SUMMARY OF ARGUMENT

I.

The challenged statutes are the most far-reaching regulation of political communication in the history of the republic. The Court of Appeals failed to give the legislation the critical scrutiny requisite under long-accepted First Amendment principles. *Erzoznik* v. *City of Jacksonville*, 43 U.S.L.W. 4809 (June 23, 1975). Especially close scrutiny is required of these statutes under the accepted tests of constitutionality because (1) they were adopted without adequate attention to their consequences; (2) they fundamentally alter the political process — the core of the First Amendment — and thus affect the rules by which all other rules are made, *Kovacs* v. *Cooper*, 336 U.S. 77, 96 (1949) (Frankfurter, J., concurring); *Kramer* v. *Union Free School District*, 395 U.S. 621 (1969); and (3) they were enacted by legislators who faced a plain conflict of interest, since the statutes in many ways affect the political balance between challengers and incumbents.

The Court of Appeals incorrectly applied *United States* v. *O'Brien*, 391 U.S. 367 (1968), to analyze the statutes' restrictions on political speech. Since virtually every political communication involves the expenditure of money, expenditures for political purposes are protected by the First Amendment. *United States* v. *Auto Workers*, 352 U.S. 567, 594 (1957) (Douglas, J., dissenting). Limiting the use of money for political purposes amounts to restricting the communication itself. Similarly, contributions for political purposes are both a means for contributors to express their political ideas and the necessary prerequisite for candidates for federal office to communicate their views to voters. Contributions are crucially important in determining the level of political debate and in implementing the freedom of association guaranteed by the First Amendment.

Political contributions and expenditures may be regulated only when the regulation is limited to non-speech elements or protects a governmental interest unrelated to freedom of expression. The line regulation must walk is the line between speech assimilated into regulable activity (*e.g.*, bribery) and speech directed at persuading voters to make political choices (*e.g.*, the typical political expenditure or contribution). The Court of Appeals failed to walk this line; instead it denigrated political campaigns by labeling them "Romanesque political extravagances," thus evaluating the content of speech and dismissing it as unworthy of protection. *Police Department of Chicago* v. *Mosley*, 408 U.S. 92 (1972)

II.

The Court of Appeals offered three justifications to support the challenged statutes, none of which can sustain them.

(1) Allegations about the "skyrocketing" costs of political campaigns are unsupported by the facts, and lack perspective when compared to increases in other relevant variables. Particularly when compared to increases in the perquisites of office that incumbent members of Congress appropriate for themselves, campaign costs — a vital element of self-government — are modest. If anything, Americans spend too little to finance the process by which their government is chosen.

(2) Private campaign financing does not, as the Court of Appeals believed, foster inequality of political expression. Large contributions are made on behalf of the whole spectrum of political persuasion. They frequently benefit society's least powerful. And they enable political candidates to overcome other inequalities exacerbated by the challenged statutes, such as differences in name recognition, the perquisites of incumbents, and inequality

of access to the media. *Cf. Miami Herald Publishing Co.* v. *Tornillo*, 418 U.S. 241 (1974).

(3) The challenged statutes do nothing to reduce either the fact or the appearance of corruption. They enhance rather than diminish the power of so-called "special interests," even allowing government contractors more involvement in campaign contributions than prior law permitted. Properly drafted disclosure statutes, the regulation of cash contributions, and other precisely tailored measures would provide measures both far more effective against corruption and far less intrusive on constitutional rights than the challenged legislation.

III.

The FECA's limits on the expenditures political parties, committees and candidates can make in election campaigns are in flat violation of the First and Fifth Amendments. They are explicit limitations on political speech, and will result in an unjustifiable diminution in the levels of campaign activity and political debate. The national interest demands full and robust debate during political campaigns. *Mills* v. *Alabama*, 384 U.S. 214 (1966). Limiting campaign expenditures unconstitutionally closes important channels of political communication, and restricts the ability of the average citizen to participate effectively in the process by which his leaders are chosen. The highest courts of two states have recently invalidated expenditure limitations on these grounds. *Deras* v. *Myers*, Ore. , 535 P.2d 541 (1975); *Bare* v. *Gorton*, 84 Wash. 2d. 380, 526 P. 2d 379 (1974).

Expenditure limits will have their most injurious effects in races for truly contested House and Senate seats by preventing effective competition. The FECA limits discriminate generally against candidates challenging incumbent officeholders in favor of their opponents.

Williams v. *Rhodes*, 393 U.S. 23 (1968). Victorious challengers must typically spend in excess of the expenditure limits in order to overcome the enormous resources available to incumbents as perquisites of their offices. Those perquisites have a political impact even when scrupulously used for non-political purposes. Incumbent officeholders have an enormous stake in their own reelection. They have been dramatically increasing their own perquisites in recent years while at the same time limiting what challengers may spend.

The security in office of incumbent members of Congress has been steadily increasing. The FECA expenditure limits, by making it more difficult for candidates espousing change to win elections, will make American politics more unresponsive and will inevitably lead to an increase in alienation and apathy — two ills the statutes were supposed to cure.

Independent candidates and political parties without a national committee are discriminated against by provisions allowing national and state committees of political parties to spend in excess of the candidate-expenditure limits. Such distinctions serve no purpose other than discrimination between different kinds of political movements and are therefore abridgements of First Amendment rights of association and speech.

IV.

The FECA limits citizens in spending money, completely independently of political campaigns or campaign organizations, to advocate or oppose the election of a "clearly identified candidate." Publication of individual speech concerning political candidates is limited to an expenditure far less than the cost of a single full-page advertisement in the New York Times or the Washington Post. The statutes thus undercut a primary forum for the

expression of opinion, the paid editorial advertisement. *New York Times* v. *Sullivan*, 376 U.S. 254 (1964).

This provision effectively limits participation in the electoral process to (1) the candidates' campaign organizations and (2) the mass media. While these groups play vital and important roles in the political process, enhancing their relative power by stifling expression by individual citizens and independent groups, which greatly enriches the public debate, is constitutionally indefensible.

V.

The FECA's limitations on contributions to political candidates by individuals and groups violate the constitutional rights of donors, candidates, and volunteer political workers. Limits on contributions will neither reduce corruption nor equalize political speech.

Contribution limits discriminate invidiously against challengers to incumbents, minor parties and independent candidates by making it more difficult for such parties and candidates to compete effectively in the electoral process. Large contributions have functioned as "seed" money for groups advocating social change throughout our history, and they play the same role in political campaigns. In closely contested races in particular, large contributions received relatively early in the campaign provide the wherewithal to raise larger amounts of money (generally in smaller contributions) to be used in the campaign. Limiting large contributions thus lessens political participation and reduces the level of political debate.

Limits on the incidental expenses of volunteers restrict rights of speech and association, *Edwards* v. *South Carolina*, 372 U.S. 229 (1963), yet serve no compelling governmental interest and invite discriminatory enforcement.

Providing substantially higher limits on contributions by a candidate or his family than on contributions by others impermissibly discriminates against candidates without personal wealth. *Bullock* v. *Carter*, 405 U.S. 134 (1972).

The requirements that political committees must meet before they may contribute to candidates violate the First and Fifth Amendments by placing irrational restrictions on the exercise of protected rights of political expression and association. *Kusper* v. *Pontikes*, 414 U.S. 51 (1973). Moreover, these restrictions enhance the power of already organized and established interest groups, contrary to the rationale supposedly justifying the statute.

Finally, the contribution limits are overbroad. The same limitations apply no matter what federal office is being sought. They do not take into account differences among potential recipients (*e.g.*, differences between presidential candidates granted federal funding for presidential campaigns and those denied such funding), and they ignore several less intrusive means such as properly drafted disclosure statutes. *United States* v. *Robel*, 389 U.S. 258 (1967); *Aptheker* v. *Secretary of State*, 378 U.S. 500 (1964).

VI.

The federal subsidy provisions of Subtitle H violate the general-welfare clause of the Constitution by giving money directly to political parties and candidates. There is no public interest in relieving candidates of the need to raise money to finance their political activities, and none of the legislative rationales supports these provisions. Direct financing also effectively establishes the two major parties, requires an allocation formula which necessarily discriminates invidiously against some candidates, leads to excessive government entanglement in the affairs of political parties, and encourages continuous struggles in

Congress over who is to have what political power. *Meeks* v. *Pittenger*, 43 U.S.L.W. 4596 (May 19, 1975); *Lemon* v. *Kurtzman*, 403 U.S. 608 (1971). Even if some method of federal funding is permissible, far less intrusive means are available.

Chapter 95 (general-election subsidies) allocates federal subsidies in a discriminatory and to some extent random fashion with respect to third parties and independent candidates by effectively excluding them from public financing because they are thought to have no chance to win office, while subjecting them to the limits on contributions because they might be corrupted. Four particularly discriminatory features are: (1) the use of a prior-vote criterion to determine the level of funding; (2) the fact that major parties receive the full subsidy prior to the November election, while small and new parties and independents receive nothing until after the election (if anything even then); (3) only general-election candidates on the ballot in ten or more states are eligible at all; and (4) only general-election candidates receiving 5 percent or more of the popular vote are eligible at all. *Williams* v. *Rhodes, supra; Sweezy* v. *New Hampshire*, 354 U.S. 234 (1957).

Chapter 96 (pre-nomination subsidies) discriminates against candidates who raise contributions in less than twenty states, those who seek ballot positions through petitions (because no federal funding is provided for obtaining ballot status), and those who lack the support of organized interest groups with state affiliations which can easily make certain candidates eligible for primary matching grants. *Lubin* v. *Panish*, 415 U.S. 709 (1974).

VII.

Although disclosure of certain contributions enables voters to make informed electoral choices, and the government may legitimately require disclosure to that end, the FECA disclosure requirements are unconstitutionally overbroad. They intrude on protected rights of associational privacy, and deter individuals from making political contributions by subjecting them to the fear of harassment in their business and employment relationships. *NAACP* v. *Alabama*, 357 U.S. 449 (1958).

Minor-party and independent candidates face particular difficulties, as the Court of Appeals recognized, and Chief Judge Bazelon emphasized in his dissent. The various interests justifying disclosure do not support the sweep of the FECA's disclosure provisions which treat all parties and candidates indiscriminately. *Pollard* v. *Roberts*, 283 F. Supp. 248 (E.D. Ark.), *aff'd per curiam*, 393 U.S. 14 (1968).

There is no substantial nexus between the claimed governmental interests and the disclosure thresholds. Disclosure should be required only of those contributions whose donors may seek to influence governmental action unlawfully. The threshold of disclosure should be much higher, and calibrated to the office involved, rather than set at a single, arbitrary threshold for all federal offices. *United States* v. *Rumely*, 345 U.S. 41 (1953).

The provisions imposing disclosure and burdensome reporting requirements on individuals who make independent expenditures of more than $100 serve no legitimate purpose and have a chilling effect on political expression.

VIII.

The enforcement provisions of the challenged statutes are unconstitutional in two major respects. First, vesting the power to nominate and appoint four of the six members of the Federal Election Commission (FEC) in the major-party leadership in Congress violates Article II, Section 2 of the Constitution, which vests the power of appointment of officers of the United States in the President. FEC members must be appointed by the President if the FEC has any substantial powers which Congress itself could not exercise, and the FEC plainly does have such powers. *Springer* v. *Government of the Philippine Islands*, 277 U.S. 189 (1928). Even under the test used by the Court of Appeals, the FEC is vested with *primarily* executive and judicial duties and therefore must be appointed by the President. Even if some of the FEC's powers have not yet been utilized, the appointment issue is ripe for adjudication, since the issue is whether Congress may constitutionally create the commission it did, not whether the FEC may at some time in the future employ its full battery of powers.

Second, the enforcement provisions give the FEC the power to stand astride American politics in a fashion far more intrusive and chilling than the Constitution permits. *Lamont* v. *Postmaster General*, 381 U.S. 301 (1965). The FEC has virtually unfettered discretion to enforce statutory provisons that are often hopelessly vague. The possibility for discriminatory enforcement is particularly high since the FEC is dominated (by virtue of several statutory provisions) by incumbent members of Congress, one of the very interests the FEC is supposed to regulate. Similarly, Subtitle H allows the FEC and the Secretary of the Treasury excessive discretion in allocating federal subsidies to presidential candidates.

The FEC's power to disqualify citizens from federal candidacy plainly conflicts with constitutional provisions governing qualifications for federal office. *Powell* v. *McCormack*, 395 U.S. 486 (1969).

ARGUMENT

I.

The Court of Appeals Failed To Subject the Challenged Legislation to the Critical Scrutiny Necessary When Fundamental Rights Are at Stake.

The challenged legislation massively reorders the American political process. It avowedly and drastically regulates peaceful political communication. It subjects candidates and their supporters to a panoply of sanctions, including criminal penalties, for what since the beginning of the republic have been customary campaign activities. It envelops every participant in the political process in a complex, burdensome, often ambiguous maze of regulation.

This legislation is beyond question the most far-reaching regulation of political communication in the history of the republic. It touches upon rights indispensable to the preservation of our other freedoms. In addition, it deals entirely with matters in which those who enacted the law have a considerable self-interest. As a result, the legislation does not carry the normal presumption of constitutionality. Rather, it requires an exceptionally critical exercise of judicial review.

A. *Both Principles General to First Amendment Cases and Factors Unique to This Legislation Require Far More Exacting Scrutiny Than the Court of Appeals Accorded.*

The Court of Appeals failed to give this legislation adequate scrutiny. It wholly failed to examine the actual impact of the statutes on the political process. It uncritically deferred to legislative judgments as to what means were appropriate, and did not examine whether there was a rational—let alone necessary—relationship between the ends sought and the means chosen.

Before upholding a law imposing restrictions on speech, the courts must determine, at the very least, that: (1) the governmental interest in the restriction is unrelated to the suppression of free expression; (2) the governmental non-speech interest is legitimate and compelling; (3) the threat to this interest is real and not merely speculative; (4) the restriction on speech is incidental or indirect; (5) the means employed are rationally and precisely related to the protection of the governmental interest and are the least intrusive available; and (6) the specified enforcement process is impartial, well monitored and well suited to the highly sensitive task involved. See *Erznoznik* v. *City of Jacksonville*, 43 U.S.L.W. 4809 (June 23, 1975); *New York Times* v. *United States*, 403 U.S. 713 (1971); *Kramer* v. *Union Free School District*, 395 U.S. 621 (1969); *United States v. O'Brien*, 391 U.S. 367, 377 (1968); *United States v. Robel*, 389 U.S. 258 (1967); *Aptheker* v. *Secretary of State*, 378 U.S. 500 (1964); *New York Times* v. *Sullivan*, 376 U.S. 254 (1964); *Sherbert* v. *Verner*, 374 U.S. 398 (1963); *Speiser* v. *Randall*, 357 U.S. 513 (1958); *Thornhill* v. *Alabama*, 310 U.S. 88 (1940).

Plaintiffs will demonstrate, as to each section of the challenged statutes, that one or more—usually several—elements of this test cannot be met. At this point, we identify those factors unique to this legislation which suggest that the closest scrutiny under the tests are enumerated is warranted.

(1) This action challenges the constitutionality of laws enacted under the banner of reform in the wake of America's worst political scandal. History demonstrates, however, that claims that government and the political process are being subverted, whether by a foreign power, a totalitarian ideology or powerful economic interests, often generate demands for protective action which may lack discrimination. Not infrequently, the fear of subversion and zeal for new law are far more substantial than the evidence

generating them. And, not infrequently, the measures taken are adopted without adequate attention to all their consequences and implications.

At issue is not the worthiness of the intentions of those seeking reform but the constitutionality of the final legislative product. As Mr. Justice Brandeis wrote, "[e]xperience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning but without understanding." *Olmstead* v. *United States*, 277 U.S. 438, 479 (1928) (dissenting opinion). And Mr. Justice Black has noted, "history indicates that the urge to do good has led to the burning of books and even to the burning of 'witches.' " *Beauharnais* v. *Illinois*, 343 U.S. 250, 274 (1952) (dissenting opinion.)[1]

Some public-opinion polls relied upon by appellees and the Court of Appeals (op. at 1514) tend to demonstrate that public alienation and mistrust of the political process are at a high level, as is the belief that government is run by a few big interests. Findings I, 133 and 149-55, pp. 114-28; App. II-159-89, 206-53. Even assuming that election practices are a major cause of this alienation (an improbable assumption given the events of the past fifteen years), and even assuming that the challenged legislation will operate to lower that alienation and mistrust (an assumption that is surely incorrect, see *infra*, pp. 67-75), the implication that

[1] In striking down certain portions of New York's campaign control laws, a three-judge court recently wrote that " . . . when the State through the guise of protecting the citizen's right to a fair and honest election tampers with what it will permit the citizen to see and hear even that important state interest must give way to the irresistible force of protected expression under the First Amendment." Vanasco v. Schwartz (E.D.N.Y. July 14, 1975), 74 Civ. 1533, slip op. at 20-21.

fundamental constitutional guarantees of political freedom can be swept aside by the latest Harris Poll is a remarkable view of the Constitution.[2]

(2) Where legislation infringes on First Amendment political rights, and especially where one group limits the political freedom of others, searching and critical scrutiny is essential and a broad presumption of constitutionality unjustifiable. Thus Mr. Justice Frankfurter, even while denying the "preferred position" of First Amendment rights, nevertheless declared that "those liberties of the individual which history has attested as the indispensable conditions of an open as against a closed society come to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements." *Kovacs* v. *Cooper*, 336 U.S. 77, 95 (1949) (concurring opinion).

This Court has held that "[t]here is practically universal agreement that a major purpose of the Amendment was to protect the free discussion of governmental affairs." *Mills* v. *Alabama*, 384 U.S. 214, 218 (1966). And "speech concerning public affairs is more than self-expression; it is the essence of self-government." *Garrison* v. *Louisiana*, 379 U.S. 64, 74-75 (1964). See Kalven, *The Negro*

[2] In a 1970 CBS poll, people were asked "As long as there appears to be no clear danger of violence, do you think any group, no matter how extreme, should be allowed to organize protests against the government?" *Seventy-six percent replied "no,"* while only twenty-one percent answered "yes."

The same poll asked "Do you think everyone should have the right to criticize the government, even if the criticism is damaging to our national interest?" *Fifty-four percent replied "no,"* while only forty-two percent said "yes." CBS News Reference Book-Public Opinion: Changing Attitudes on Contemporary Political and Social Issues, 5-8 (1972).

Clearly, if the First Amendment turns on public opinion polls, freedom of speech, press, and assembly are in serious jeopardy.

and the First Amendment 59-64 (1966). As Professor Meiklejohn put it, "The First Amendment does not protect a 'freedom to speak.' It protects the freedom of those activities of thought and communication by which we'govern.' It is concerned, not with a private right, but with a public power, a governmental responsibility." Meiklejohn, "The First Amendment as an Absolute," 1961 Sup. Ct. Rev. 245, 255. Judicial scrutiny is thus at its greatest when there is a claim of infringement of the freedom of political communication, for such claims touch upon what this Court has identified as the "central meaning of the First Amendment." *New York Times* v. *Sullivan*, 376 U.S. 254 (1964).

The First Amendment by its very terms suggests that our primary national policy is *no* regulation in the area of political communication. See *Columbia Broadcasting System, Inc.*, v. *Democratic National Committee*, 412 U.S. 94, 126 (1973). This is not a costless policy, for unhampered expression may well be harmful—for example, through the circulation of falsehoods against a candidate. It may also risk occasional physical confrontation by permitting controversial, insulting, and provocative demonstrations, or seem unfair by permitting the exclusion of certain points of view by private publications. But freedom of any kind imposes costs, and the First Amendment dictates at the very least that such costs are presumptively less than those entailed in restrictive control by law. See *Miami Herald Publishing Co.* v. *Tornillo*, 418 U.S. 241 (1974); *New York Times* v. *Sullivan*, *supra*; *Edwards* v. *South Carolina*, 372 U.S. 229 (1963). As Mr. Justice Brandeis said: "[f]ear of serious injury cannot alone justify suppression of free speech and assembly . . . . Those who won our independence were not cowards. They did not fear political change. They did not exalt order at the cost of liberty." *Whitney* v. *California*, 274 U.S. 357, 376-77 (1927) (concurring opinion).

The freedom to engage in peaceful political communication not only is guaranteed by the First Amendment, although that would be sufficient, but inheres in every constitutional provision relating to democratic, representative government. Without that freedom, the plain intent and effect of those other provisions might easily be vitiated. *Stromberg* v. *California*, 283 U.S. 359, 369 (1931). If candidates or other citizens are not free to disseminate political information, to criticize officials, to engage in political advocacy—and to spend the money that it costs to do so—the competition for elective office which makes democratic government responsive government will be gravely weakened. Constitutional provisions protecting the integrity of elections and guaranteeing the right to vote will become abstractions having no relation to the actual functioning of the organs of power. An honest mistake in legislative judgment in this area carries with it consequences potentially far more dangerous than in areas such as economic or safety regulation. See *United States* v. *Carolene Products Co.*, 304 U.S. 144, 152, n. 4 (1938).[3] Mistakes here go to the heart of political freedom, and because they may permanently change the political process—the very process counted on to correct error—they may well be irredeemable. Thus Mr. Justice Cardozo described freedom of speech and thought as "the matrix, the

[3] Although the Court of Appeals chided the appellees for asserting that the standards of review applicable to economic regulation should be used to judge the challenged statutes (op. at 1519), the court itself substantially adopted that theory. Citing cases upholding the Alabama Unemployment Compensation Law, Steward Machine Co. v. Davis, 301 U.S. 548 (1937), and the Federal Social Security Act of 1935, 49 Stat. 620, Carmichael v. Southern Coal Co., 301 U.S. 495 (1937), the court in effect declined to apply the "least intrusive means" test once it decided that some limitation on, for instance, contributions was within Congress' power (op. at 1518).

indispensable condition of nearly every other form of freedom." *Palko* v. *Connecticut*, 302 U.S. 319, 327 (1937).

The constitutional approach to legislation infringing on political liberties differs in other essentials from that of economic regulation. In the latter case, legislatures are permitted to make distributional judgments between groups as to the benefits of regulation, *Daniel* v. *Family Sec. Life Ins. Co.*, 336 U.S. 220 (1949), on the basis of data which the courts will rarely second-guess, *Williamson* v. *Lee Optical*, 348 U.S. 483 (1955). Indeed, it is the essence of a pluralistic democracy that the results of group interplay with respect to economic regulation not be upset by a non-elected branch.

Where political liberties are involved, however, gross distributional judgments among groups are not permitted because individual rights which attach to every citizen are at stake. Courts cannot, in those circumstances, show great deference to legislative judgment, for political liberty can be protected only by a highly particularistic inquiry into the need for the legislation in question and its impact on particular individuals and groups. Whereas the grossest correlation of ends and means can save regulation of an economic nature, *Railway Express Agency* v. *New York*, 336 U.S. 106 (1949), only the strongest interest of the state can justify stilling even a highly individualistic act of anger so long as it implicates political communication. See *Street* v. *New York*, 394 U.S. 576 (1969); *Schneider* v. *Irvington*, 308 U.S. 147, 161 (1939).

(3) Searching judicial scrutiny is necessary for yet another reason: those controlling the political branches of government have an enormous stake in how the political dialogue is carried on, and cannot be expected to regulate that dialogue with a fine impartiality. Officeholders are, of necessity and quite legitimately, concerned with the preservation and enlargement of their own and their supporters' political power. It merely recognizes fact, rather than casts aspersion, to acknowledge that this concern must affect the content of any regulation of political communication.

History has not been kind to legislation "cleansing" the political process of disfavored activities of opponents of those in power. The challenge to the Sedition Act of 1798, 1 Stat. 596, for example, while never heard by this Court, "has carried the day in the court of history." *New York Times* v. *Sullivan*, 376 U.S. at 276. That it has no doubt stems from a recognition that "it is a profound tenet of democracy that no government official has the legal power to silence such commentary about himself." Kalven, *The Negro and the First Amendment* 15 (1966).

This Court has held that the presumption of constitutionality draws its strength from the assumption that legislative structure provides fair representation of "all the people" and that, when the constitutional issue entails a challenge to that assumption, the presumption is weakened. *Kramer* v. *Union Free School District*, 395 U.S. 621, 628 (1969). Claims such as those made here, that a majority is trying to limit the political communication of a minority or that incumbents are attempting to restrict the political activities of challengers, are just such an attack upon the assumption. This point in fact is the simple proposition that great deference to legislative decisions cannot be justified in the face of a plain conflict of interest.

The court below upheld extensive and unprecedented restrictions on political communication on the grounds that "[t]he wiles of ambitious office seekers and their supporters are not easily cabined" (op. at 1518). It should have recalled that every one who voted for this legislation is such an office seeker.

Notwithstanding these reasons unique to this legislation which should have prompted the closest scrutiny, the

court below failed to give the challenged legislation even the normally careful scrutiny required when First Amendment rights are at stake.[4] Rather, it relied upon the expressed intent of the sponsors of the legislation to eliminate corruption, to redress inequality, to reduce the power of special interests by eliminating the "corrosive influence" of campaign money, and to prevent another Watergate (op. at 1510-16). Whether the record really suggests the baleful state of affairs described by the sponsors, whether the legislation may indeed aggravate rather than cure the identified abuses, and whether far less intrusive means are available received only cursory examination to the extent addressed at all.

B. *The Expenditure or Contribution of Money for Political Purposes Is Protected by the First Amendment and May Be Regulated Only in Carefully Defined Circumstances.*

The primary reason for the failure of the court below to afford the necessary scrutiny was its conclusion, premised upon *United States* v. *O'Brien, supra,* that all contributions and expenditures for political purposes are so infected with "non-speech elements" that virtually unlimited regulation is permissible. Indeed, it not only upheld the extensive restrictions of the present legislation but went on to say that they "may well be not enough" (op. at 1582).

O'Brien does not sustain such an analysis. In *O'Brien,* this Court held that Congress may prohibit the destruction of a draft card even when that destruction serves as the symbolic expression of an idea. The Court said no more than that speech incidental to regulable conduct might be limited; it did not in any sense endorse the wholesale supression

[4] The Court of Appeals' majority opinion acknowledged elements of the proper standard of review (op. at 1516-20), but the opinion comes nowhere near the searching and critical inquiry that the court itself agreed was necessary.

of speech. It did not, for example, hold that all speech opposing the draft might be suppressed since some of it entailed the burning of draft cards.

That campaign expenditures and contributions have the status of protected speech does not mean that certain contributions or expenditures may not, because of the particular circumstances surrounding them, be regulated because they entail minimal elements of protected speech or seem to entail an immediate and high danger of a *quid pro quo.* Drawing any such lines, however, must follow a study of the nature of the abuses demonstrated in the record and of the actual impact of the challenged legislation on the political process.

(1) *Expenditures for Political Purposes Are Protected by the First Amendment.*

Expenditures for political purposes, whether by an individual or a group on behalf of a cause or of a candidate, or by candidates on behalf of themselves, are essential to political speech and are protected by the First Amendment.

As Mr. Justice Douglas once noted:

> "The making of a political speech up to now has always been one of the preferred rights protected by the First Amendment. It usually costs money to communicate an idea to a large audience. But no one would seriously contend that a limitation on the expenditure of money to print a newspaper would not deprive the publisher of freedom of the press. Nor can the fact that it costs money to make a speech—whether it be hiring a hall or purchasing time on the air—make the speech any the less an exercise of First Amendment rights."

United States v. *Auto Workers*, 352 U.S. 567, 594 (1957) (dissenting opinion).[5]

Virtually every political communication involves the expenditure of money. Even the paradigm case of the speaker in Hyde Park involves transportation and a soapbox. Demonstrations, see *Edwards* v. *South Carolina*, 372 U.S. 229 (1963), require that people be moved and concentrated in one place. Handbills, see *Talley* v. *California*, 362 U.S. 60 (1960), require a printing press, paper, and some means of distribution. In bad weather, speeches require a hall. Bull horns, pens, pencils, and even picket signs cost money. Similarly, litigation to preserve one's rights can entail substantial expenses. *NAACP* v. *Button*, 371 U.S. 415 (1963).

Virtually every form of political activity thus requires either out-of-pocket expenditures or at least an "opportunity cost" (in economic terms, the foregoing of opportunities to earn money). Volunteers need a paid staff to supervise them and may have to sacrifice income to devote their time to the campaign.

These examples, moreover, involve the less costly and often less efficient means of political communication. Television speeches, direct mailings, transportation, a staff to research issues, consultants, and newspaper advertisements are all essential to effective political communication and involve substantial financial outlays.

It mocks the purpose of the First Amendment to argue that, while such communication cannot be restricted, the un-

[5] Mr. Justice Douglas would have found 18 U.S.C. § 610 (prohibiting corporate and labor-union contributions) unconstitutional; the passage quoted in the text is part of his opinion on that point. The majority did not reach the constitutional question but instead remanded the case for trial.

derlying expenditures can. Under this view, a limitation on how much newspapers spend on publication—to hire reporters, investigate stories, and print editions—would not be a regulation of the newspaper itself. But see *Grosjean* v. *American Press Co.*, 297 U.S. 233 (1936). Political activities require the expenditure of resources. Prevent the use of resources and the activities will end. Prevent the use of money to obtain the resources and the same result is obtained.

Expenditures for political communication fall within what this Court has called "pure speech" under the First Amendment, *Edwards* v. *South Carolina*, 372 U.S. 229 (1963). Since protection of such speech is a "major purpose of the amendment," *Mills* v. *Alabama*, 384 U.S. 214, 218 (1966), expenditures for political communication have the same stature as the communication itself. "Liberty of circulating is as essential to [freedom of speech and of the press] as liberty of publishing; indeed, without the circulation, the publication would be of little value." *Lovell* v. *Griffin*, 303 U.S. 444, 452 (1938); *accord*, *Talley* v. *California*, 362 U.S. at 64.

Decisions of this Court clearly support these propositions. Not only do they derive from the cases cited above, but *New York Times* v. *Sullivan*, 376 U.S. 254 (1964), directly held that it was "immaterial" for First Amendment purposes that the advertisement there in question had been purchased. *Accord*, *Bigelow* v. *Virginia*, 43 U.S.L.W. 4734 (June 16, 1975). Indeed, one important function of "freedom of the press" is to preserve avenues of citizen communication through the medium of political advertising.

It makes no difference whether the expenditure is on behalf of an issue or on behalf of a candidate. In either case those making the expenditure seek to communicate with the public to promote their views on governmental policy.

The First Amendment does not distinguish between praising unionism in the abstract and inviting people to join a particular union. *Thomas* v. *Collins*, 323 U.S. 516 (1945). Nor does it distinguish between espousing a cause and supporting the political candidates who believe in it.

(2) *Contributions for Political Purposes Are Protected by the First Amendment.*

Contributions for political purposes are a means of espousing political ideas and pursuing political goals. They are not, as the court below suggested (op. at 1517), in any sense the functional equivalent of votes. When put to campaign purposes, contributions enable candidates to communicate their views to the voters who then make a free choice. Contributions thus serve to increase the level of political communication.

The sole argument for distinguishing between expenditures and contributions for similar ends is that, in the case of the contribution, the donor gives up control over the manner in which the money is ultimately expended. So long as contributions are used for campaign purposes, that attempted distinction fails, for the choice between an expenditure and a contribution is one made by donors as to the most efficient means of espousing their political ideas and pursuing their political goals.

At some point in the history of a movement, it may make sense for adherents to spend money acting independently in its support, *e.g.*, newspaper advertisements, bumper stickers. At other times giving to organizations which espouse the underlying ideas but do not endorse or support candidates may seem most sensible. At yet other times it may be more appropriate to give directly to candidates who espouse or symbolize that cause, or to do all these things. The ultimate goal, after all, is to see one's

views become government policy. Electing the right candidates is central to achieving that end.

To restrict donors in their choice of means of expression is directly to limit the articulation of their political goals, the effectiveness of their pursuit of those goals, and their right to associate in combination with others to make that effectiveness greater.

The 1968 presidential campaign of appellant Eugene McCarthy is a paradigm case of why contributions to a candidate are protected by the First Amendment. Individuals who contributed to the McCarthy campaign in order to further the cause of terminating the war in Southeast Asia were able to pool their resources in the most effective way available at that time. If each had been required to act only as a volunteer, or to contribute only to "issue" organizations not supporting a candidate, not only would the McCarthy campaign, which was heavily dependent on campaign money, have been far less successful, see *infra*, p. 135, but all contributors as a result would have been far less able to further the cause in which they believed so strongly. Campaign contributions were thus a means of exercising the freedom of association as well as the freedom of expression.

Similarly, many persons intensely committed to the cause of ending the war made the quite rational decision that only by extending their influence beyond their voting districts would they be able to further that cause effectively. It is too constricted a notion of the political process to suggest that persons ought not to be able to propagate their views effectively to voters in other voting districts. As was the case with the McCarthy New Hampshire primary campaign, events in one district can have an enormous influence on issues affecting all voters, and political freedom is not possible if citizens are not free to attempt to

influence the electoral process wherever it affects them. *Pierce* v. *Kohler*, 163 Wisc. 615, 158 N.W. 696 (1916).

The contribution of money to a candidate, in conjunction with other individuals making similar contributions or contributions of their time and energy, is precisely the sort of associational freedom protected in *NAACP* v. *Alabama*, 357 U.S. 449 (1958), and *Kusper* v. *Pontikes*, 414 U.S. 51 (1973). Unless the First Amendment right of freedom "to petition . . . for a redress of grievances" is to be reduced to a shadow, the rights of individuals to join together to support like-minded candidates with financial contributions must be preserved.

Nor can one distinguish between contributions and other political acts because of any "obligation" that is created. The volunteer lawyer, whose contribution of time is not limited by the statute, and the contributor of money stand on the same footing so far as that is concerned, as do other kinds of protected activities such as a *New York Times* editorial endorsement or favorable coverage by *Time* or *Newsweek*. Indeed, the latter are probably far more valuable, and thereby create a more compelling "obligation," than any contribution received by a candidate. No one would suggest that, because issues affecting the press such as shield laws or postage rates are subject to congressional action, the press may be barred from endorsing a candidate on the ground that it might be pursuing its "special interests."

Of course, those who contribute money to a candidate hope to further their political, social and economic views—just as those who engage in demonstrations and rallies, write books on political issues, organize like-minded citizens, draft and circulate petitions, buy advertisements, publish periodicals or newspapers, make speeches, sponsor seminars or teach-ins, or engage in litigation hope to further their political, social and economic views. Such

activities are the hallmark—as well as the indispensible precondition—of a free society. See *Eastern Railroad Presidents' Conference* v. *Noerr Motor Freight*, 365 U.S. 127, 139 (1961).

These principles have been clearly recognized in the decisions of this Court. In *Bates* v. *City of Little Rock*, 361 U.S. 516 (1960), and *United States* v. *Rumely*, 345 U.S. 41 (1953), this Court recognized that contributions are protected by the First Amendment. In *NAACP v. Alabama*, *supra*, the Court indicated that the individual's right of expression, not the association's, was at stake. The First Amendment applies to financial contributions to political candidates and organizations dealing with public issues. *ACLU* v. *Jennings*, 366 F. Supp. 1041 (D.D.C. 1973), *vacated as moot sub nom. Staats* v. *ACLU*, 43 U.S.L.W. 5043 (1975); *United States* v. *National Committee for Impeachment*, 469 F.2d 1135 (2d Cir. 1972); *Pollard* v. *Roberts*, 283 F. Supp. 248 (E.D. Ark.), *aff'd per curiam*, 393 U.S. 14 (1968).

(3) *The Permissible Zone of Regulation of Campaign Contributions and Expenditures Is Narrow.*

Although campaign contributions and expenditures are protected by the First Amendment, there is a permissible zone of regulation recognized in the decisions of this Court. That zone is narrow; it is limited to the regulation of non-speech elements or the protection of a governmental interest unrelated to freedom of expression. The Court has held that "when 'speech' and 'non-speech' elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the non-speech element can justify incidental limitations on First Amendment freedoms." *United States* v. *O'Brien*, 391 U.S. 367, 376 (1968). Where that principle applies, the regulation must be carefully tailored to fit the circumstances which called it into being.

Under this Court's decisions, advocacy which is not likely or intended to incite or produce illegal actions, *Brandenburg* v. *Ohio*, 395 U.S. 444 (1969), peaceful, non-obstructionist demonstrations, *Edwards* v. *South Carolina*, 372 U.S. 229 (1963), and non-disruptive activity such as wearing arm bands, *Tinker* v. *Des Moines Independent Community School District*, 393 U.S. 503 (1969), cannot be labeled "non-speech." But where the activity brings about results other than those which stem from persuasion, such as the obstruction of thoroughfares or coercive pressure on a judicial system, see *Cox* v. *Louisiana*, 379 U.S. 536, 379 U.S. 559 (1965), the government may regulate the attendant conduct with narrowly drawn provisions directed at the harm to be eliminated.

Where the money is given on the understanding that specific governmental action will be taken as a result thereof, or as a reward therefor, Congress may regulate the conduct. See *United States* v. *Brewster*, 408 U.S. 501 (1972). Neither persuasion nor the usual exercise of political power is involved. Rather, the official has abandoned freedom of decision. That and the acts inducing it are not protected, because the speech involved is necessarily assimilated into validly regulable activity. See also *Pittsburgh Press Co.* v. *Pittsburgh Commission on Human Relations*, 413 U.S. 376 (1973) (aiding the formation of an illegal contract).

The case is different, however, when a campaign expenditure is made in the hope of persuading voters to cast their ballot for a particular candidate, and when, without the *quid pro quo* mentioned above, a contribution is made to a candidate to use in his campaign to communicate with voters. To be sure, those who make such contributions or expenditures hope their interests or views will be advanced by the election of the candidate. What is involved is no more (assuming the politician takes the contribution of expenditure into account at all) than the

kind of political judgment any politician makes as to decisions which affect those who have in the past aided his candidacy (by votes, volunteer work, editorial endorsements, contributions or otherwise) or might do so in the future. It is no more subject to limitation by the state.

The line between these polar cases is the line which regulation of expenditures and contributions must walk; it must be directly and precisely aimed at control of conduct with minimal speech elements while intruding as little as possible on the exercise of associational rights and freedom of speech.

In walking this line, there is no reason to distinguish between groups making expenditures in the hope of electing candidates who will take governmental action favorable to their economic interests and groups whose expenditures appear more ideological. As Mr. Justice Black stated for the Court in *Eastern Railroad Presidents' Conference* v. *Noerr Motor Freight*, 365 U.S. at 139:

> "It is neither unusual nor illegal for people to seek action on laws in the hope that they may bring about an advantage to themselves and a disadvantage to their competitors . . . [T]o disqualify people from taking a public position on matters in which they are financially interested would deprive the government of a valuable source of information and . . . deprive the people of their right to petition in the very instances in which that right may be of the most importance to them."

Because expenditures and contributions for political purposes have the same constitutional stature as political speech, moreover, they may not be regulated because of their content, *Schacht* v. *United States*, 398 U.S. 58 (1970), or because they are too persuasive, *Mills* v. *Alabama*, 384

U.S. 214 (1966), or because access to communication is unequal, *Miami Herald Publishing Co.* v. *Tornillo*, 418 U.S. 241 (1974). Neither may they be regulated in the name of the anti-democratic purpose stated in the House Report accompanying this legislation, to protect the electorate from "a sophisticated advertising program." H. Rep. No. 93-1239, 93d Cong., 2d Sess. 3 (1974).

In the present case, the court below made no attempt to isolate the non-speech elements but flatly held that the speech itself could be prohibited by proscribing access to the necessary resources. For every practical purpose it held that the contribution and expenditure of money for campaign purposes are simply not protected by the First Amendment. Indeed, it denigrated political campaigns by labeling them "Romanesque political extravagances," a judgment as to the content and quality of the speech involved. With all due respect, the judiciary's responsibility under the Constitution is to protect speech, not to evaluate it and dismiss it as unworthy of protection. *Police Department of Chicago* v. *Mosley*, 408 U.S. 92, 95 (1972).

II.

The Legislation Is Not Responsive to a Demonstrated Need, and Aggravates Rather than Cures the Abuses Asserted as Its Rationale.

A. *The Statute Cannot Be Sustained on the Basis of the Justifications Offered To Support It.*

The challenged legislation has repeatedly been defended in the name of eliminating corruption, reducing inequality, preventing "special interests" from exercising undue influence over government, and preventing another "Watergate." The suggestion repeatedly made is that those who attack the FECA are attacking these goals. The great tragedy, however, is that the legislation as framed is unresponsive to these goals and in some respects actually counterproductive. The most suspect contributions are left untouched, the power of special interests is *increased*, and the danger of a recurrence of an affair such as "Watergate" is enhanced.

The theory upon which the challenged legislation was enacted by Congress and upheld by the Court of Appeals is based on three essential allegations.

First, it is claimed that the costs of political campaigns have "skyrocketed" at an unacceptable rate (op. at 1512). The Senate Report spoke of "the task of halting escalating campaign costs," S. Rep. No. 93-170, 93rd Cong. 1st Sess. 1 (1973), while the House Report declared,

> "Under the present law the impression persists that a candidate can buy an election by simply spending large sums in a campaign . . . . The electorate is entitled to base its judgment on a straightforward presentation of a candidate's qualifications for public office and his programs for the Nation rather than on a sophisticated

advertising program which is encouraged by the infusion of vast amounts of money." H. Rep. No. 93-1239, 93-1239, *supra*, at 3.

The second allegation asserts that traditional methods of campaign financing give the "wealthy few . . . a stronger political voice than the unwealthy many because they are able to give and spend more money . . . " (op. at 1517).

The third allegation is that such financing creates a "link . . . between campaign contributions and preferential treatment by politicians . . . ." *Hearings on S. 372 Before the Subcommittee on Privileges and Elections of the Senate Committee on Rules and Administration*, 93rd Cong., 1st Sess. 149 (1973). The claim is that campaign contributors frequently solicit and receive special governmental action in return for their contributions.

The evidence alleged to support the first two of these three rationales for the legislation fails to demonstrate a compelling need. At best, it is speculative; at worst, it flies in the face of common observation. And while the third rationale, the threat of corruption, reflects concern about a genuine problem, the evidence demonstrating it in no sense calls for *this* particular legislative scheme, which, as demonstrated *infra*, pp. 63-78, leaves the most suspect campaign finance practices entirely untouched while outlawing vast areas of legitimate activity.

It must be emphasized that the FECA is not particularized legislation aimed at specific suspect practices. Rather, it is based on a general condemnation of private campaign financing. This generally negative view of private campaign financing taken by the sponsors of this legislation finds little or no support in the works of scholars who have studied the subject over the last generation. Numerous scholars, while not denying that private financing has some negative aspects, have concluded that it performs countervailing valuable functions. Cole, *Campaign Financing in*

Senate Elections, passim (1975); Alexander, "Links and Contrasts Among American Parties and Party Subsystems," in Heidenheimer ed., *Comparative Political Finance* 103-04 (1970); Adamany, *Financing Politics* 230-33 (1969); Polsby and Wildavsky, *Presidential Elections* 39-40 (1968); Key, *Politics, Parties and Pressure Groups* 495-513 (5th Ed. 1964); Heard, *The Costs of Democracy* 6 (1960); Overacker, *Money in Elections* 5-14 (1932).

Effective disclosure provisions, properly drawn, might well be expected further to illuminate the role private financing plays in elections. Unfortunately, the FECA Amendments came so soon after the first effective disclosure provisions were enacted that additional information on the role of campaign money provided by disclosure was neither assembled nor digested by students of the subject prior to the enactment of the legislation; nor was there time to ascertain fully whether operation of the disclosure provisions themselves would provide an adequate remedy for the perceived ills.

(1) *"Skyrocketing" Costs of Campaigns*

Claims about skyrocketing campaign costs lack perspective. Costs have of course increased over the years. But that increase is comparable to or less than changes in other relevant variables. The rise in campaign costs between 1952 and 1972 (almost 300%) is almost exactly matched by the increase in total expenditures for advertising of commercial products (305% between 1950 and 1972), Findings I, 13, pp. 7-8, App. II-10-11, and by the increase in the Gross National Product (310% between 1952 and 1972), *Id.* I, 90, p. 54; App. II-52.

Absolute costs, moreover, are not so high as some think.[1] In fact, the total 1968 campaign bill was 16 percent

[1] Political spending in the United States is low compared to that of other countries. Findings I, 54, p. 25; App. II-26. Sweden, for example, (continued)

less than the total spent that year on advertising for tobacco products. The total cost of all elections in 1972, $400 million, was less than that spent on advertising by the two largest commercial advertisers, *id.* I, 92. In addition, percentage increases in the federal budget over a comparable period have far outstripped any increase in the costs of elections, *id.* I, 96, p. 56; App. II-53-54.

If the costs of campaigns are skyrocketing, then the financial advantages available to incumbent officeholders are rising at the speed of light. While campaign costs increased 300% between 1952 and 1972, the cost of franked mail increased 600% between *1954* and *1970*, *id.* I, 35, p. 21; App. II-23. The following demonstrates the incredible increase in more recent years:

Cost of the Frank

1966	$7.5 million
1973	23.0 million
1975	38.0 million
1976 (budgeted)	46.1 million

Id. I, 36, p. 21; App. II-23; Wall Street Journal, June 2, 1975, at 5, col. 1.

Of course, use of the frank throughout a Congressman's term benefits him. And since, as all parties have agreed and the District Court found, "the peak mailing periods for use of franked mail are just prior to the dates of primary and general elections" (Findings I, 34, p. 21, App. II-23), it is unrealistic to consider the rise in campaign costs as an independent phenomenon.

[1] (continued)
spends four times as much per capita as the United States, Adamany and Agree, Political Money: A Strategy for Campaign Financing in America 9, 221 (forthcoming this month from Johns Hopkins U. Press).

Increases in other perquisites of incumbency, *id.* I, 24-33, pp. 15-21, App. II-16-23, have increased to match the astonishing pace set by the frank, to the point where Americans for Democratic Action now estimates that an incumbent member of the House seeking re-election has a $976,000 advantage per term over a challenger solely because of these perquisites. *Washington Post*, Aug. 26, 1975, at A3, col. 1. Since the start of 1974 alone, the value of these advantages has increased by 30 percent. *Id.*

The development of new and costly telecommunications technology increases the amounts spent on campaigns but also dramatically increases the numbers of voters reached and the amount of political information they receive. Heard, *supra*, at 403-05.

So too does an increase in the number of primary elections and local caucus meetings increase the cost of politics. Between 1968 and 1972 the number of primaries doubled, and comparable changes in rules governing the selection of delegates in non-primary states also occurred. Findings I, 91, p. 55; App. II-53. We cannot have increased political activity and more widespread participation in the democratic process without increased costs. Alexander, "The Impact of Election Reform Legislation on the Political Party System," 27 (delivered at the 1975 meeting of the American Political Science Association, Sept. 2-5, 1975).

Similarly, the increased incidence of ticket splitting, *id.* I, 38-40, p. 22, App. II-24, forces individual candidates to rely less on party tickets and fading party loyalties and to run and spend more on individual campaigns.

The allegation of "skyrocketing" campaign costs is based entirely on the fact that campaign costs rise more quickly than the Consumer Price Index. However, the parties have agreed and the District Court found that ". . . campaign items tend to be those, historically, whose prices increase faster than the inflation rate, in particular,

items such as wages and other payments for personal services, and advertising costs." Findings II, B 47, p. 202; App. II-581. Not only does this destroy the "skyrocketing" costs argument; it also means that limitations on expenditures linked only to the Consumer Price Index will in real terms become more restrictive as time goes by.

Finally, the Court of Appeals was concerned about the time and energy presidential candidates spend on fund raising under the system of unlimited private financing. For support it relied solely upon two statements made in congressional hearings (op. at 1513), each of which seems exaggerated and self-serving and is nowhere supported in the literature describing political campaigns. Moreover, the effect of the legislation on contribution size makes fund raising far more onerous and time-consuming than before. By the time the court below decided this case, it was abundantly apparent that the effect of the challenged legislation has forced members of Congress with presidential ambitions to curtail their legislative responsibilities in order to engage in full-time fund raising well over a year and a half before the presidential election. Alexander, "The Impact of Election Reform Legislation on the Political Party System," *supra*, at 27; Washington Post, Sept. 15, 1975, at A1, Col 1; Los Angeles Times, Aug. 15, 1975, at I26, col. 1; New York Times, July 21, 1975, at 10, col 3.[2]

It may well be that too little rather than too much is spent on American political campaigns. As two commentators, Adamany and Agree, *supra*, at 27, have written:

[2] In addition, the legislation demands not inconsiderable expenditures of time by candidates and their staffs in attempting even to understand, let alone comply, with its numerous and often ambiguous requirements. Investing massive amounts of time in wrestling with the exactions of a federal bureaucracy may be a poor substitute for contacts with voter-contributors.

> "... we pay only a small sum for competitive campaigns that pose choices of officials, clarify the programs of candidates, and expose the records and qualifications of those seeking to govern. After food, clothing, shelter, and perhaps religious affiliation, what greater necessity is there for citizens in a democracy than the political process by which they select officials and programs?"

Similarly, Herbert Alexander has observed that

> "[p]olitical costs need to be considered in perspective. Considered in the aggregate, politics is not overpriced. It is underfinanced .... The important consideration is not the costs as such, but whether they are essential for a competitive and responsive political system." Hearings on S. 372, *supra*, at 219.

(2) *Inequality of Political Voice*

As for the second rationale—that private campaign financing fosters inequality of political expression as between the rich and the poor—the court below simply assumed that such inequality necessarily means that the views and interests peculiar to the wealthy will receive disporportionate favor (op. at 1513).

This assumption is neither intuitively nor empirically correct. Political newcomers who lack an established political base and high name recognition need large contributions to make a start, a point demonstrated in more detail *infra*, pp. 124-38. Large contributions may also offset other inequalities such as access to the media, the perquisites of incumbent officeholders, and the unfamiliarity of one's cause. See *infra*, pp. 128-31. Recipients of large contributions may be, and often have been, among society's least powerful. See *infra*, pp. 121-24. Merely as one example,

Julian Bond's campaign manager, in ending Bond's presidential candidacy, blamed the challenged legislation for his failure to raise adequate "seed money" to mount an effective campaign. See *infra*, p. 132. As one scholar put it, " . . . the traditional fat cats are *not* all of one species, allied against common adversaries. Big givers show up importantly in both parties and on behalf of many opposing candidates," Heard, *supra*, at 6 (emphasis in original).

Indeed, campaign contributions tend to be less concentrated in a small percentage of the population than other forms of political activity. More people contribute than work actively for a candidate or participate in demonstrations. Findings I, 107, pp. 97-8; App. II-147. The court below relied upon the fact that 1 percent of the people account for 90 percent of political contributions and that 2 to 3 percent of the people are responsible for 95 percent of financing for congressional elections (op. at 1513). In fact these figures demonstrate that contributing to campaigns is one of the most widespread form of political participation and expression today, for 3 percent of the population amounts to well over seven million people. If seven million people participated in ownership and control of the institutional press, the allegations of media concentration found inadequate in *Miami Herald Publishing Co.* v. *Tornillo*, *supra*, to justify inhibitory legislation would never even have been made.

The court below suggests that increased expenditures lead to increased reliance on a small number of large contributors (op. at 1513). There is no support in the record for this assertion. The popular base of campaign contributions has been broadening in recent years, as demonstrated by the increasing proportion of income to national-level committees derived from individual contributions in sums of less than $500 in the presidential years 1948-1968, Findings I, 45, pp. 23-24, App. II-25, and the experience of the 1968 McCarthy campaign and the 1972 McGovern effort. Both of these campaigns, and many others as well, began with

"seed" money from a small number of large contributions, and used that money to amass a large campaign fund from large and small contributors alike, see *infra*, pp. 135-36.

(3) *The "Corruption" Rationale*

This legislation was as much a response to the suspicion of corruption as to the fact itself. John Gardner, speaking on behalf of Common Cause, testified that "[o]ne can rarely nail down the causal relationship between campaign gifts and later political acts, but the pattern of political giving creates a cloud of suspicion that can only deepen the cynicism of the average citizen." Hearings on S. 372, *supra*, at 92. This theme was repeated again and again by supporters of the FECA Amendments.[3]

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[3] Senator Scott, a co-sponsor, said,

"Regardless of the motives of the donor, or the intentions of the recipient candidate, there appears to be an appearance of impropriety. I regret that this is so, because such charges are usually unfounded, but like the proverbial wife of Julius Caesar, we must be above and beyond reproach." *Hearings before the Subcommittee on Privileges and Elections of the Committee on Rules and Administration, on S. 1103, S. 1954, S. 2417, S. 3*, 93d Cong., 1st Sess. 33 (1973).

Senator Abourezk:

"It is really the appearance of corruption that harms us, I think, more than any corruption that does go on, because there are certain controversial amendments up today that I would like to vote for, but because I received contributions from daily farmers around the country, I am almost afraid to vote for them because it is set up now in the press that anybody who does vote for them who has taken money from the dairy farmers has been bought off." *Hearings on S. 23, S. 372 et al.*, before the Subcommittee on Privileges and Elections of the Senate Committee on Rules and Administration, 93d Cong., 1st Sess. 207 (1973).

Senator McGovern:

"[T]hose of us who run for office can profess that the campaign contributions we receive do not in any way control our votes, but I venture to say that not many believe it." 120 *Cong. Rec.* S. 4553 (daily ed. March 27, 1974).

The record demonstrates a limited, though plainly serious, amount of corruption in the sense of proven or suspected *quid pro quo* arrangements involving campaign contributions and government action. At most, the record shows:

(1) A number of illegal corporate contributions which may or may not have involved such *quid pro quos*. Findings I, 109-17, pp. 98-106, App. II-148-53, but which are untouched by the FECA Amendments since they were illegal under prior law. These provide support for the FECA Amendments only in that effective, but narrowly drawn, disclosure provisions (which appellants support) will make such crimes more easily detectable in the future.

(2) A few apparently unsuccessful attempts to influence governmental action, *id.* I, 118, 160, 164, pp. 106, 171-72; App. II-153, 254-55.

(3) Attempts by the milk producers to influence governmental action, *id.* I, 158, 165, pp. 171-73; App. II-254-55.

(4) The conferring of several ambassadorships in arguable or apparent exchange for large contributions, *id.* I, 121-23, pp. 107-08; App. II-154-55.

The record also demonstrates two categories of contributions with a high potential for improper motive: first, contributions made to opposing condidates; second, contributions before April 7, 1972 (the effective date of the disclosure provisions) or so late in the campaign as not to be subject to effective disclosure.

These cases represent only a fraction of total campaign contributions. That the evidence should be so meager is highly significant in light of the fact that it was gathered in the midst of a major political scandal, at a time of unusual public receptivity and interest, when evidence of official corruption was uniquely and unprecedentedly available,

and in the course of a vigorous investigation by an independent special prosecutor. While any substantial level of corruption must be dealt with, the particularized abuses demonstrated are subject to particularized remedies and do not call for wholesale and unnecessary limitations on political communication. Indeed, bans on labor-union and corporate contributions, 18 U.S.C. §§ 610, 611, the source of much that was illegal in the 1972 elections, and attempts at bribery and giving rewards for government action were illegal, *id.*, §§ 201, 597, long before Watergate or the FECA Amendments. The other abuses identified are untouched by this legislation.

There is a serious lack of precision in the charges made about the "corrosive influence" of private campaign financing. Such rhetoric fails to distinguish between *quid pro quo* arrangements and giving to candidates who are already predisposed to the donor's positions on public issues. Thus Sen. Kennedy argued on behalf of the legislation, "is there any doubt that the AMA money will be used in the fall elections to subvert national health insurance and to support candidates who oppose health reform?" 120 *Cong. Rec.* S 5275 (daily ed. April 4, 1975). And the record in this case is thick with detailed lists of campaign contributions by "special interests," Findings I, 101-03, pp. 57-96; App. II-54-146.

The evidence indicates, however, that contributions generally go to candidates already disposed to the donor's point of view, and that ideological lines are usually clearly drawn well in advance of the campaign. Comparing the 25 most expensive House races in 1972 and 1974, Findings II, A 8, and 10, pp. 76-81, 84-87, App. II-422-33, 435-40,—races in which large contributions were of critical importance to the candidates—with the endorsements the candidates received from various political groups with well-defined policy stances, 30 *Cong. Q. Wkly. Rep.* 2967 (Nov. 11, 1972); 32 *Cong. Q. Wkly. Rep.* 3077 (Nov. 9, 1974), confirms the common-

sense proposition that campaign contributions generally flow to those candidates who have clearly defined positions and with whom donors already agree.

Once "corruption" or "corrosive influence" is defined mechanically to embrace all contributions intended to help political allies communicate with the voters, the case against private campaign financing is not hard to make. Coming from a different Senator in 1968, the statement quoted *supra*, p. 65, might have been, "is there any doubt that anti-war money will be used in the fall elections to subvert the war in Southeast Asia and to support candidates who oppose it?"

The court below relied heavily upon the existence of contributions by what it and the appellees label as "special interests" (nowhere defined) to justify the proscriptions of the FECA (op. at 1513-16). However, the vast majority of such "special interest" contributions are small, and in the aggregate constituted no more than 15.7 percent of total contributions to congressional candidates in 1972 and 11.6 percent in 1974. Findings I, 101-03, pp. 57-96, App. II-54-146, and II, A 85-96, pp. 114-120; App. II-460-64. To single out these contributions as unjustifiable because of the views they represent, moreover, comes perilously close to regulating the content of political speech. In any event, the actual impact of the FECA is to strengthen the relative power of these groups to support candidates they favor, see *infra*, pp. 68-72.

Although the sponsors of the FECA Amendments made much of "Watergate" as a demonstration of the evils of campaign financing, the reforms which in fact speak to the break-in and subsequent cover-up (*e.g.*, prohibiting cash contributions in excess of $100, 18 U.S.C. § 615) constitute only a fraction of the legislation and are not challenged by appellants. To the extent that private campaign money financed the affair—in fact, public money financed much

of the cover-up—it was through contributions made prior to effective disclosure requirements. The unraveling was in fact accomplished in large part by tracing these contributions, Findings I, 128, p. 110; App. II-156. Private contributions or campaign expenditures, if subject to properly drawn disclosure requirements, are thus hardly well suited to illegal or covert purposes. If "Watergate" were truly the target of the FECA Amendments, they would have stopped with disclosure and the severe limitation of cash contributions.

B. *The Impact of the Challenged Legislation Will Be To Aggravate Rather Than To Cure the Specified Abuses.*

This legislation cannot be upheld merely upon the repeated intonation of "corruption", "special interests", "inequality", and "Watergate." Scrutiny rather then rhetoric is called for when legislation trenches upon First Amendment rights, and here that scrutiny must be directed to the impact of the FECA on this nation's political life. That impact, aside from the basic impact of severely inhibiting free expression, most assuredly will be to increase the power of "special interests," to increase the power of those who are "in" while decreasing that of those who are "out," and to leave untouched the chances of a recurrence of some of the kinds of incidents which fit under the penumbra of the term "Watergate." The great tragedy of the challenged statutes is that they do not reform those problems which legitimately concerned the court below, but rather aggravate them, and do so by trenching on First Amendment rights.

One effect of the statute will be to reduce competition between candidates, by making it more difficult for challengers to unseat incumbents. As demonstrated more fully *infra*, pp. 87-104, challengers need to spend at relatively high levels to offset the high name recognition of incumbents and their extensive use of their perquisites of office,

e.g., the frank. To become viable, moreover, challengers need "seed money," see *infra*, pp. 130-38, which is made virtually impossible to raise by the limits on contributions.

The FECA simply does *not* limit political contributions and expenditures equally. It limits *all* expenditures by challengers but only *some* expenditures by incumbents. And it limits *all* contributions to challengers but only *some* contributions to incumbents. Incumbent officeholders can by their own vote increase the resources at their disposal in ways which are the equivalent of very large contributions. See *infra*, pp. 130-38. The actual impact of the legislation, therefore, will necessarily make campaigns by challengers less likely to succeed.

Another effect will be to increase the relative power of organized economic interest groups, which the court below believes are already too powerful. Under 18 U.S.C. § 608 (b) (2), a political committee may give up to $5,000 to each candidate. There is no restriction upon the number of such committees which may represent a particular "interest." Any individual may give $25,000 to a single such committee so long as none of it is earmarked for a particular candidate.

Under 18 U.S.C. §§ 610 and 611, moreover, corporations and unions may solicit contributions to "segregated funds" which make contributions to candidates and political committees and may pay for the maintenance and administration of such funds. Unions, business interests, and professional groups need only create several political committees rather than one to continue their past practices, subject only to the "earmarking" limitation and the $25,000 limit on individual contributions.

Thus, while the statute severely limits contributions by ideologically motivated individuals and spontaneously organized committees, it allows the practices of organized interest groups to continue unfettered.

The legislation leaves untouched, for example, the contributions of the dairy industry, which figured largely in the argument of appellees and the opinion of the court below. Every county organization of the dairy producers can have a political committee entitled to give up to $5,000 apiece to an unlimited number of candidates. In effect, *dairy interests can give unlimited amounts to a candidate, can contribute to opposing candidates and can time these contributions to avoid effective disclosure.* And what is true of dairy interests is true of all organized economic interest groups.

The lack of even a whisper of protest from such groups is surely significant. As one commentator has stated:

> "Special interest groups such as labor union, business, education, health and dairy political-action committees are relatively unaffected by the new contribution limits. The reason is that they have strong local bases and can funnel their contributions through state and local affiliates, thus making smaller multiple contributions instead of one large contribution to their favorite candidates.
>
> "It is ironic and instructive that labor, one of the groups the law would be expected to check, had no complaints with the $5,000 contribution limit on political committees. Neal Gregory, former co-director of the Center for Public Financing that lobbied for the law's passage, has reported that the $5,000 limit was checked with the AFL-CIO before it was put in the bill. 'There was no opposition to it,' he said." Freed, "How to Sneak Around the New Campaign-Reform Law," Baltimore Sun, Aug. 17, 1975, at K3, col. 1.

When this legislation was enacted, the National Association of Manufacturers distributed a brochure

describing the opportunities for corporate interests under the FECA Amendments. The following letter, from the President of the NAM, accompanied the brochure:

"April 10, 1975

"NAM

"Dear Businessman:

"In October, 1974 Congress made some important changes in the law which governs the permissible political activity of corporations. Now, *whether your firm is a government contractor or not*, you may establish a political committee—usually called a separate segregated fund—within your plant or office; *you may solicit voluntary employee contributions to this fund; company officers may serve as fund managers and some or all of the money collected may be distributed by the managers of the fund to political candidates and committees; and company dollars used to administer the fund are not considered a political expenditure.*

"Congress has created a legitimate means for corporations to offer employees a meaningful way *to mass their voluntary political contributions and direct them with multiplied effect toward deserving candidates who understand the problems of their company, the business community and the nation.* While other parts of the new campaign finance law may be viewed as being restrictive, the changes regarding separate segregated funds provide an opportunity for legal and effective expressions of political support and *open up new sources of campaign funds for business-oriented candidates.*

"Therefore, the NAM is urging its members to establish voluntary company-sponsored political fund raising programs (in addition to other voter registration campaigns, candidate visits, and citizenship programs). This manual is offered as a guide for use by company officials. . . . We hope that you will use this manual to provide much needed help to business-oriented candidates in the coming elections.

"Sincerely,
/s/
E.D. Kenna"

(Emphasis added.)

It has already been reported that "[t]he predicted upsurge in corporate political activity has begun . . . . Twenty apparently new political committees have been formed by companies seeking to take advantage of the clarification of section 610, prohibiting corporate campaign gifts except through a separate, segregated fund." 2 Campaign Practices Rep. No. 3 (Aug. 25, 1975), at 3. See also Walters, "New Wrinkles in Corporate Fund Raising," National Journal Reports (Sept. 6, 1975), 1283.

The 20-state matching grant requirement for federal subsidization of primary expenses under Subtitle H, see *infra*, pp. 165-68, also increases the leverage of organized interests with state or local affilitates. Not only can they make sizeable contributions but they can be of enormous aid in helping a candidate become eligible for matching grants.

Notwithstanding all the drumbeating about eliminating the "lavish contributions" by "special interests," the legislation in fact increases their relative power. It does not in any sense respond to the specified abuses. It does nothing to limit the size of "special interest" contributions, nothing to prevent contributions by such interests to op-

posing candidates, nothing to control contributions made too late to be subject to effective disclosure, and nothing to curb the ability of winners, even after victory at the polls, to seek contributions for purposes other than campaigning. See *infra*, p. 77.

The FECA thus avoids and indeed frustrates remedies for the very problems which the court below believed to be the worst abuses of private financing. While the McCarthy campaign of 1968 would have died before the New Hampshire primary had the FECA been in effect, see *infra*, pp. 97, 135, the contributions of the dairy industry in 1972 would have been unaffected.

Beyond that, the FECA subjects the political communication of candidates and their supporters to the discretionary judgment of a regulatory agency staffed by appointees of the President and the congressional party leadership. Question after question will come before the FEC calling upon it to decide how much speech particular candidates or groups may engage in. Myriad decisions by the FEC, down to the choice of which campaigns to audit,[4]

[4] The House Subcommittee on Elections, following hearings, recently recommended that the Commission's authorization be cut almost in half on a yearly basis. Representative Wayne Hays, a member of the subcommittee and Chairman of the House Administration Committee, participated actively in the hearings:

"*Wayne Hays:* During the hearings, Chairman Hays made it clear to all six commissioners that he intended to make the commission toe the line—his line—when it came to money, staffing, and regulations.

"'You're not going to set the ground rules,' Hays angrily told Curtis at one point. 'The committee is. As chairman, I'll tell you. You're coming back every year for an authorization.'

"'Are you coming to my district without a complaint to audit me?' Hays queried Curtis in attempt to determine whether the Commission intended to initiate investigations. It was possible, Curtis said.

(Continued)

will have direct effects on the outcome of elections. Particularly at a time when many are concerned about the "capture" of the regulatory agencies by the regulated groups, subjecting political communication to a similar process—indeed to the discretion of an agency already "captured" by incumbents under the explicit terms of the legislation establishing it—risks our basic freedoms.

In no sense are the challenged provisions a genuine reform emerging from Watergate.[5] They do nothing to prevent the criminal acts that occurred in that affair. As for the 1972 election itself, they would not have impaired the Nixon campaign, which could easily have relied, even more than it did, on the perquisites and the visibility of sitting Presidents. His opponent, Sen. McGovern, however, would have lost, between the beginning of his campaign and three days after the New Hampshire primary, $636,811 in campaign contributions made illegal by the FECA Amendments, and in all probability his campaign would have collapsed. See *infra*, pp. 135-36.

To the extent, therefore, that Watergate involved abuses of presidential power, the FECA is counterproductive. It increases the ability of incumbent Presidents to win re-election, gives them some control over the distribution of matching grant primary money to potential opponents, and, by centralizing control over political com-

[4] (Continued)

"'If you're getting your authorization from my committee, you won't,' Hays retorted."

1 Campaign Practices Reports No. 22, pp. 2-3 (May 19, 1975).

[5] The FECA Amendments *retroactively reduce* the statute of limitations for campaign practices' violations relating to campaign contributions from five years to three years. 2 U.S.C. § 455(a). Any such crime which occurred before today's date in 1972 can no longer be prosecuted, as it could be if prior law remained in effect.

munication in the discretion of a regulatory agency, risks far more serious scandals than those of 1973. Those who are concerned by recent revelations of the abuse of governmental agencies such as the Internal Revenue Service for political purposes can only be appalled at the potential for abuse of the Federal Election Commission.

The tide of informed commentary has turned against this legislation as time has permitted careful scrutiny of its actual impact on American politics. Commentator after commentator,[6] as well as the American Bar Association[7]

[6] Although the following list of citations may be somewhat unusual, the views of experienced political commentators merit consideration in the circumstances of this litigation. See, *e.g.*, Broder, "The GOP's Financial 'Loophole,' " Washington Post, Sept. 14, 1975, at B 6, col. 3; Freed, "How to Sneak Around the New Campaign-Reform Law," Baltimore Sun, Aug. 17, 1975, at K 3, col. 1; Broder, "Campaign Funding Sermon," Washington Post, Aug. 24, 1975, at B 6, col. 5; Broder, "Campaign Spending Limits," Washington Post, July 27, 1975, at C 6, col. 5; von Hoffman, "Bread and Circuses," Washington Post, Aug. 1, 1975, at D 1, col. 1; Matt Reese, F. Clifton White, and Robert Thomson (campaign consultants), in Dickenson, "Political Consultants See Trouble in New Campaign Finance Law," Washington Star, July 31, 1975, at A 1, col. 1; Paul R. Hearle and Charles T. Manatt (Republican and Democratic California State Chairmen, respectively), Los Angeles Times, July 30, 1975, at I-3, col. 7; Freedman, "Imagine This," New York Times, June 30, 1975, at C 29, col. 1; Roche, "Reforms Require Reforming," Advance, June 24, 1975; Lofton, "Candidate Spending Laws," Oceanside Blade Tribune, June 30, 1975; Newfield, "The Permanent Incumbent Act," The Village Voice, May 19, 1975, at 12, col. 1; Lydon, "Political Fundraising Is Now Up To Accountants and the Mail," New York Times, April 20, 1975, at E 5, col. 1; Witcover, "New Law May Hurt Longshot Candidates' Fund-Raising," Washington Post, April 13, 1975, at A 4, col. 1; Goldfarb, "A Wrinkle in the Campaign Law," Washington Post, Jan. 27, 1975, at A 18, col 3; Dillin, "Reform Law Pinches U.S. Candidates," The Christian Science Monitor, Jan. 24, 1975, at 1, col. 4; Alexander, "The Panic To Reform," Newsweek, Jan. 20, 1975, at 84; Will, "The Limits of Campaign Spending Limitations," Washington Post, Jan. 14, 1975, at A 15,

(Footnote 7 appears on next page)

and the American Civil Liberties Union,[8] have noted its impact on free political competition or condemned its intrusion on political freedoms.

C. *Less Intrusive and More Effective Means Were Available to Congress.*

The "less intrusive means" doctrine is usually invoked in circumstances in which this Court must balance losses in the efficiency of regulation of unprotected conduct against attendant gains in the protection of speech. In the present case, no such balancing is necessary, for the least intrusive means are actually far more efficient regulations of the

col. 1; Kilpatrick, "Campaign-Law Challenge," Washington Star-News, Dec. 27, 1974, at A 6, col. 1; Alsop, "The Effects of Campaign Finance Reform," Washington Post, Nov. 25, 1974, at A 21, col. 1.

Space forbids quotation of but a few representative comments. David Broder wrote that "[i]n its haste to pass some kind of reform bill, Congress has unleashed an unguided missile against the American political system. . . this law we have on the books begins to look like a menace." Broder, *supra*, April 30, 1975, at A 17, col. 6. One commentator has noted that ". . . bribes will continue to pass and influence will still be peddled, despite the naive expectation that the bad guys will dutifully line up and file their reports along with the rest of us. At the same time, however, in the dubious name of 'election campaign reform,' we have managed to make a monkey out of the idea of free and democratic elections," Freedman, *supra*. Another said, ". . . what occurred was that Congress, in its laudable rush to purify politics, may have anesthetized it," Roche, *supra*.

[7] The American Bar Association Special Committee on Election Reform recently issued its Report (hereafter cited as "ABA Report"), in substantial measure adopting appellants' views.

[8] The American Civil Liberties Union's recently issued "Questions and Answers About Campaign Finances" (hereafter cited as "ACLU Report") argues on constitutional grounds against every challenged provision of the statutes.

abuses relating to the potential for corruption identified by appellees and the court below.[9]

There is a class of cases in which the involvement of non-speech elements seems particularly high and which are not adequately covered by bribery and similar statutes.

For example, prior to the passage of this so-called "reform" legislation, government contractors were barred from making any direct or indirect contribution to candidates for federal office. Now, 18 U.S.C. § 611 has been clarified so that such contractors *may* facilitate and support contributions from their employees so long as they establish "separate, segregated funds." *Id.* Before its "reform," this section was carefully directed at situations rife with conflicts of interest and the danger of corruption, *cf. Civil Service Commission* v. *Letter Carriers*, 413 U.S. 548 (1973). Thus the challenged legislation *eliminates* a precise remedy that already existed for a precise problem.

The appointment of large contributors to high office involves the danger of *quid pro quo* arrangements which can be avoided by precise measures. Many such officers, including ambassadors, are presently subject to Senate confirmation; carefully drawn disclosure provisions would provide the Senate with the facts it needs to determine whether appointments have been improperly influenced. As to offices not presently subject to confirmation, Congress could require that any potential appointee who contributed in excess of a certain amount to the President's campaign, or the campaigns of his party's candidates, must be confirmed by the Senate. This would enable the Senate to scrutinize on a case-by-case basis whether or not the appointment was based on merit or on campaign contributions. Congress could go further if it wished, and prohibit *any* appointment of contributors of more than a specified amount.

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[9] For additional discussions of the application of the "less intrusive means" test, see *infra*, pp. 151-52, 163, 184, 188-89.

Another category may be the contributing of funds to opposing candidates. Absent special circumstances, the protected speech elements in helping to persuade voters to choose *all* of several alternatives seem low. A law directed at such practices, if carefully drafted, would be less intrusive than the present law, which encourages such multiple giving. 33 *Cong. Q. Wkly Rep.* 1961, 1962 (Sept. 13, 1975).

Late contributions, above a certain size, may be timed to avoid effective disclosure prior to the election. A law which either limited such late contributions or required instantaneous disclosure to permit the timely informing of the voters would be directed at a particular evil.

Congress clearly would have the power to require that contributions be actually spent on campaigns and thus not be of value for purposes other than persuading voters, *i.e.*, for non-speech purposes. For when contributions can be put to virtually unlimited uses, the danger of improper conduct is clearly high, as is the temptation to raise money not needed for political communication. The FECA, however, not only fails to deter this abuse but actively encourages it. See 2 U.S.C. § 439a.

Finally, disclosure of contributions large enough to attract a candidate's attention is the least intrusive regulation and, even more importantly, the most democratic. Whether a contribution is too large or in furtherance of a bad special interest rather than a good common cause is better decided in every case by the voters than by wholesale legislative fiat. Similarly, if a candidate is failing to address substantial issues but merely putting on "Romanesque . . . extravagances" (op. at 1581), the electoral process provides a direct, effective, democratic remedy.

The Court of Appeals asserts that the events of 1972, *id.*, and the failure of earlier disclosure statutes, *id.* at 1592-93, demonstrate that disclosure is inadequate. With regard to the failures of disclosure statutes prior to the 1971 Act, appellants in no way contest the conclusion that they were

both ineffective and inadequately enforced. Indeed, they believe that, but for the problems discussed *infra*, pp. 170-92, the 1971 disclosure requirements of the FEC are a much-needed reform in this area. But the Court of Appeals ignores the fact that the 1971 FECA, which went into effect in the middle of the 1972 campaign and was amended by the FECA Amendments prior to the 1974 election, was not even tested for one full campaign period. The Court of Appeals' reference to "the failure of piecemeal regulation to preserve the integrity of federal elections" (op. at 1593) is unpersuasive in view of Congress' failure to give the 1971 disclosure provisions a reasonable chance and to assess the need for still further legislation in the light of the effects of those provisions.

The record as to 1972, indeed, strongly indicates that disclosure is an effective remedy. The rush to beat the April 7, 1972 effective date of the disclosure provisions, and the prosecutions and exposures effected in the aftermath of the 1972 elections, Findings I, 126-27, p. 110, App. II-156, demonstrate the salutary impact disclosure must have. These events demonstrate not that disclosure is ineffective, but that the political liability it can impose is swift and complete, as is the concern rational politicians must give to the sources of their campaign money in the future.

Justified by rhetoric invoking the spectre of "special interests," "corruption," "inequality," and "Watergate," this legislation itself increases the very dangers those words symbolize. Attention to what the challenged provisions actually say and what they actually do, as well as to the far more effective and far more democratic remedies which were and are available, demonstrates that beyond question. If society is presently afflicted with alienation and mistrust, this legislation is a nostrum which, even if it briefly restored confidence at the price of freedom, would result in quick measure in the revival of an overwhelming — and quite justified — cynicism.

III.

The FECA Limitations on Campaign Expenditures by Political Candidates, Parties, and Committees Violate the Constitution.

A. *Limitations on Campaign Expenditures by Political Candidates, Parties or Committees Are Unconstitutional Per Se.*

The FECA's expenditure limits, 18 U.S.C. § 608(c), are a direct abridgement of the rights of speech and association. The speech which they abridge is that most central to the objectives and essence of the First Amendment and of any democratic society—political discussion by candidates. Speech in the political arena may be unheard unless widely and effectively distributed. To limit the expenditure of money, therefore, is to limit the speech itself. The abridgement challenged here is so fundamental that how the Framers would have regarded it is beyond question. It is palpably unconstitutional.

A single example will illustrate the point. Consider the dilemma of the candidate for federal office running in a district in which the only newspaper is implacably opposed to his candidacy and at every opportunity praises his opponent. What coverage the candidate gets is sparse and negative. Other media are for the most part either located in other districts or find a substantial audience in them. They give some coverage to his campaign and that of his opponent, but cannot afford too much in view of the interests of their audience as a whole. The candidate wants to purchase advertising, but the newspaper declines to accept it or places it on undesirable pages. Media time is very expensive relative to the number of local voters reached, since the candidate must in effect pay to reach a large audience outside the district. If he purchases any substantial amount of media time, in fact, the expenditure limits will force him to lay off his staff. He will no longer be able to

hold events to recruit volunteers and will otherwise have to restrict campaign activities, such as mailings, etc.

This is not an unrealistic hypothetical. Indeed, the nation's first presidential primary is held in a similar place. The hypothetical does not include such other likely facts as the opponent's being an incumbent with high name recognition who has made extravagant use of the frank, and who takes full advantage of his ability to generate media coverage. What it does make clear, however, is that candidate expenditure limitations cannot help but have a baleful influence on that speech which is at the core of freedom of expression.

Political campaigns provide competition central to the democratic process, Findings I, 6-7, p. 5; App. II-8. If political candidates are not to be protected in their run for office, protecting the angry acts of individuals, *Street* v. *New York*, 394 U.S. 576 (1969), cannot save freedom of expression.

The Report on the House predecessor of the FECA Amendments defended limits on candidate expenditures so the public would not be deceived by a "sophisticated advertising campaign." See pp. 55-56, *supra*. As the floor manager of the FECA Amendments, Sen. Cannon, declared, limiting the amount a candidate can spend "certainly is going to limit the amount of persuasiveness one can put forward to the public." 120 *Cong. Rec.* S 18535 (daily ed. October 8, 1974). The issue of free discussion of governmental affairs is thus squarely posed. Congress lacks the power to say when a candidate for federal office has had "too much" communication with the voters or to dictate to such candidates the strategic timing or the means by which that communication is to take place.

Political candidacies rely on the consumption of resources and the expenditure of money. Even an activity like a candidate "walk" requires advance men to invite news personnel and general citizens to meet the candidate and

the ability to provide news outlets with tape, film, pictures and press releases along the way. Cole, *Campaign Spending in Senate Elections* 159 (1975).

The Court of Appeals suggested that the limitations on contributions and expenditures are harmless because they are evenhanded: the same limits apply to everyone (op. at 1518). This is surely a novel view of freedom. Until now, no one had thought that the right to speak could be erased so long as everyone else's rights were extinguished at the same time. Indeed, the suggestion is that the First Amendment is satisfied only if the deprivation is massive enough. In a free society individual rights are protected so the public will be exposed to a robust and uninhibited debate about political matters, free of governmental regulation, no matter how reasonable or evenhandedly that regulation may be thought to affect that debate. That is the teaching of both *Miami Herald* v. *Tornillo* and *Mills* v. *Alabama*, *supra*, where this Court held that statutes which were evenhanded and might reasonably be said to equalize the opportunity to influence voters, were invalid because they lowered the level of political communication. The difference between the FECA and the legislation in those cases is that the FECA attempts the same result in a massive, indiscriminate fashion whereas the others were more narrowly focused.

In any event, the FECA's evenhandedness is illusory, for its operation inevitably works great discrimination against certain candidates and certain causes. Candidates and political movements do not begin from positions of equality. The amount a candidate needs to spend to wage a viable campaign will turn on a wide variety of factors. As a result, no limits on spending can ever be functionally evenhanded. For example, a candidate with low name recognition or poor press coverage running against a well-known opponent can increase name recognition only through his own campaign. How much or how little the opponent spends is far less important to him than how much he can

spend. Cole dep. tr. 378; Crane dep. tr. 14-20; Mahoney dep. tr. 59-63; Wertheimer dep. tr. 50-51, 53-54.

Public concerns at the beginning of a campaign, moreover, will necessarily affect the relative position of the candidates. Some messages will require more spending than others to get across. Thus, in the 1972 Michigan Senate campaign between State Attorney General Kelley and Sen. Griffin, key Kelley campaign personnel believed they could not divert the voters from the busing issue, on which Kelley was weak, to economic issues, on which he was thought to be strong, without spending considerable sums of money. Findings II, B 12, p. 194; App. II-575. That strategy depended on what one side could spend without regard to the actions of the opponent.

Campaign activity and debate will be reduced by expenditure limits, and, as a result, the public will have less information about issues of public importance at precisely the time when such information is most crucial and voter interest is at its peak. *Id.* II, B 57, p. 204; App. II-583. Not only will campaigns provide less information, but a decrease in campaign activity will likely reduce the extent of media coverage. *Id.* II, B 57-59 pp. 204-05; App. II-583. A limit on expenditures will also reduce citizen participation in political campaigns. It costs money to recruit and supervise volunteers effectively, *id.* II, B 15, 39, pp. 195, 200, App. II-576, 580, and a spending limit will tempt campaigns to put more of their resources into television spots and the like than into participatory activities, a result infringing on the associational activities of a candidate's supporters.

If Congress can limit candidate expenditures, there is no kind of political advocacy that it cannot limit. If it can set a maximum on the amount of political communication in which a candidate can engage, then it can put a maximum on the number of people who engage in a demonstration, see *Edwards* v. *South Carolina*, *supra*, or on the

number of handbills which may be distributed. See *Talley* v. *California*, *supra*. Indeed, this very statute moves radically in that direction, for it prohibits independent expenditures in excess of $1,000 "relative to" a candidate, a limit which would affect a distributor of handbills or the organizers of a demonstration.[1]

The expenditure limit itself creates pressure for further regulation. To the extent that candidates are unable to communicate with voters in ways they regard as adequate, they will feel more and more dependent upon the media for exposure. To the extent that such dependence grows so too will complaints of unfairness, see Findings II, B 58, p. 204, App. II-583, and Statement of Jim McClellan, Hearings on S. 372, *supra*, at 252-56, and demands for more and more regulation of the media. If politics is to become a regulated industry, regulation of the media is inevitable. The only way to preserve the values identified in *Miami Herald* v. *Tornillo*, *supra*, *Mills* v. *Alabama*, *supra*, and *Columbia Broadcasting System* v. *Democratic National Committee*, *supra*, is to leave candidates free to communicate with voters in the ways they believe best.[2]

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[1] The ABA Special Committee on Election Reform opposes expenditure limits of any kind. ABA Report at 5. The ACLU agrees that there should be no limits on candidate expenditures:

> "Our interest in eliminating corruption should not make us reduce discussion of public affairs. That is the inevitable consequence of limits on expenditures . . . . Limitations on expenditures by candidates directly restrict their right to speak to the electorate and the public. If candidates are limited in what they spend, they will generate less campaign activity, which in turn will mean less press interest and reporting and, thereby, less information to the electorate." ACLU Report at 18-19.

[2] Although since United States v. Classic, 313 U.S. 299 (1941), federal power to regulate primary elections has not been disputed, there

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This danger is underlined by the fact that the drafters of the FECA Amendments thought it was necessary in effect to bar the owners of newspapers from running for federal office by including within the definition of *expenditure* news stories, commentaries, and editorials in a paper owned by a candidate. 18 U.S.C. §591(f)(4)(A).

One feature of the FECA which has a uniquely radical effect on American presidential politics is the limitation on how much money a presidential aspirant may spend in any one state in both primary and general elections. The FECA prohibits spending more than twice the applicable Senate limits in any particular state. It is one thing to place total limits on expenditures by presidential hopefuls; it is quite another to mandate how and where those expenditures may be made.

This limitation is tantamount to controlling the strategy of presidential campaigns and thus the content of what the presidential candidate is trying to communicate to his party and to the public. Presidential primaries in particular states may serve crucial functions to a candidate's campaign, well beyond the voting strength or population of that state. One example will suffice. The turning point of John F. Kennedy's quest for the Presidency was his defeat of Hubert Humphrey in the 1960 West Virginia presidential primary, which enabled Kennedy to rebut the claim that a Roman Catholic could not win in a Protestant state.

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[2] (continued)
is still much to be said for maximizing a party's autonomy when its adherents choose their candidates. To the extent that expenditure and contribution limits and federal financing in presidential nominating contests interfere with this autonomy, they may well upset or distort the shifting and often fragile coalitions which comprise at least the two major parties. This risk imposed by the challenged statutes ought not to be ignored. *Cf.* Cousins v. Wigoda, 419 U.S. 477 (1975).

Had the FECA been in effect in 1960, John Kennedy would likely not have been elected President.[3]

The limitation on presidential-candidate spending in any one state in the general election may have equally profound and unwarranted effects on national politics. In a close presidential election, where the outcome may depend on the result in one or two major states, and one of the two major party candidates comes from that state, his opponent will be severely handicapped in his ability to overcome that enormous advantage. The result of the statute's restrictions may be to dictate which candidate will be elected President. No governmental interest can sustain that result.

What is true of candidates is also true of political parties and committees. Limitations on the amounts spent by these organizations also violate the First Amendment. To the extent that national conventions are a means of communicating with the public as well as of nominating candidates, any provision limiting the amount that can be spent on conventions falls within the reasoning above. *Cf. Cousins* v. *Wigoda*, 419 U.S. 477 (1975).

The highest courts of two states have recently considered expenditure limitations, and in both cases the challenged statutes were stricken down, *Deras* v. *Myers*, 535 P.2d 541 (Ore. 1975); *Bare* v. *Gorton*, 526 P.2d 379 (Wash. 1974). The *Deras* court explicitly rejected the argument that Watergate-related evils justified the Oregon state expenditure limits, stating "[w]e fail to see how these evils are relevant to the need for controlling campaign expenditures," 535 P.2d at 546. The court concluded that:

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[3] Appellant Eugene McCarthy's campaign in the 1968 New Hampshire presidential primary and George McGovern's victory in the 1972 California primary provide similar examples.

> "... the limiting legislation closes or impedes important channels of communication on public issues and thus denies citizens freedom of expression where the protection of that constitutional right is the most necessary to preserve our system of government." *Id.* at 548.

We submit that the same conclusion here is inescapable.

B. *There is No Compelling Governmental Interest Justifying Limitations on Expenditures.*

Two alleged governmental interests have been advanced to justify expenditure limitations: (1) the need to reduce the "skyrocketing" cost of elections and (2) the need to eliminate the allegedly corrupting reliance of candidates on private financing. See pp. 55-57, *supra.*

As demonstrated *supra,* pp. 57-61, the "skyrocketing" costs rationale is simply contrary to fact. Even if it were not, the idea that "too much" is being spent on elections is an impermissible rationale. It reflects a mistrust of the voter's capacity to evaluate what the House Report called "sophisticated advertising campaign[s]." H.R. Rep. No. 93-1239, *supra* at 3. There are few means of persuasion which might not be deemed somehow too persuasive or somehow likely to fool the public. Moreover, the House Report itself states only that "under present law the *impression persists* that a candidate can buy an election by simply spending large sums in a campaign . . . ." *Id.* (emphasis added). "Impressions" are not sufficient to justify infringements on First Amendment rights.

The rationale of the court below — that limitations on expenditures are necessary to reduce the incentive to violate contribution limits (op. at 1538) — justifies a massive in-

trusion on political communication on thin and unpersuasive grounds. Marginal gains in enforcement authority do not outweigh pervasive restraints on freedom of expression. The statute, moreover, does not limit expenditures only by candidates who have received large contributions. It limits expenditures by all candidates, no matter how small the contributions he receives.

In any event, limits on expenditures will on the whole reduce candidate interest in small contributions. Because small contributions cost proportionately more to raise than large contributions, Findings II, B 41, pp. 200-01, App. II-580, Cole dep. tr. 384-86, a limit on expenditures, including expenditures for fund raising, will induce candidates to raise as much as possible in contributions as large as the law allows, thus reducing the costs of fund raising.

The FECA, moreover, permits candidates to use excess funds in ways which will induce them to raise as much money as they can regardless of limits on expenditures. An incumbent is able to use excess campaign funds to defray office expenses, 2 U.S.C. §439a, or for "any lawful purpose," *id.*, which apparently includes personal use—an ironic reform to emerge from Watergate and the Agnew affair. Such funds can also be put aside to use as seed money for a reelection effort, thus increasing the advantages of incumbency and making the candidate independent of the public for financial support in the next election. The FECA Amendments thus in no way discourage candidates from raising large amounts of money.

C. *The Limitations on Expenditures Are Generally So Low as To Lack a Rational Basis, Are Impermissibly Overbroad, and Have More Than an Incidental Effect on Speech.*

The particular limitations on candidate expenditures embodied in the FECA lack a rational basis, unless they were deliberately intended to be so low as to disadvantage

challengers. See *infra*, pp. 94-104. They do not take into account variables such as incumbent use of perquisites of office or the local cost of media time. They are, moreover, far below the level of expenditures in closely contested campaigns[4] and will thus have a substantial impact on political communication.

The effect of the limits will be "marginal" or "incidental" on political communication only in contests for "safe" seats. It will be drastic, on the other hand, on races for truly contested seats, that is, on those races which in fact are crucial to a genuinely competitive electoral system. The FECA will thus affect not only the nature of fund

[4] As a political rule of thumb, a "closely contested election" is any race where the winner receives less than 55 percent of the total vote. Those Senate seats or House districts where the winner does receive more than 55 percent of the vote are typically labelled "safe" seats. Conversely, the Senate seats or House districts where the winner receives less than 55 percent of the vote are typically labelled "swing" or "marginal" seats.

This assumption may understate the opposition in general elections since a few losers receiving less than 45 percent may have been realistically regarded as serious. On the other hand, the assumption overstates the opposition in primaries without runoffs, since a 51-percent victor over ten opponents may well have been a sure winner.

"Open" seats appear where the previous incumbent is elected to another office, retires or dies. A seat previously considered safe may become a swing seat when the previous incumbent leaves. The out-of-power party may perceive that its chances have considerably increased when the party holding the seat may no longer run the well-known and popular incumbent. In such a case, both parties may well regard the seat as having become marginal. When a particular party has a firm hold on a particular seat, however, even the departure of the previous incumbent may still not be enough to move the seat from the "safe" to the "swing" category.

As a matter of practical politics, the two major parties concentrate heavily on swing seats, attempting to hold those won in the previous election (and if possible increase the margin of victory), and attempting to unseat the incumbent in swing seats held by the other party.

raising but also will dramatically restrict political communication in the most crucial electoral contests.

The different statistics available in the record, and the assumptions underlying them, are explained in Appendix A hereto. Table 1 on p. 90 clearly demonstrates that in 1972 and 1974 large numbers of candidates for the House of Representatives exceeded the expenditure limits. The same conclusion obtains in Senate races. In 1972, on the basis of estimates for general-election expenditures (see Appendix A, pp. A-2 - A-4, *infra*), 33 Senate candidates exceeded the expenditure limits, Findings II, B 19, p. 196; App. II-577. (If inflation between 1972 and 1974 were considered, this figure would be even higher.)[5] In fact, ***the expenditure limits would have eliminated one-third of total spending for the Senate in 1972.*** *Id.* II, B 20, p. 196; App. II-577. Even taking the "combined overall expenditure limit" — primary limits plus general-election limits — and using Common Cause figures unadjusted for inflation, 18 Senate candidates exceeded this limit in 1972, Findings II, A 47, pp. 99-100, App. II-450, and 17 exceeded it in 1974, *id.* II, A 28, p. 93; App. II-445.

Using this "combined overall expenditure limit" minimizes the impact of the legislation, for the reasons shown at pp. A-1-A-5, *infra*. For example, while it may be justifiable in Table 1 to measure the spending of those candidates who had serious challengers in both primary and general elections against the "combined overall expenditure limit," the opposite is the case for those candidates who had serious opposition in no more than one election. In those cases, the overwhelming bulk of expenditures can safely be assumed to have been made in only one election. Thus, the most valid measure is the $70,000

[5] To determine the exact number, the expenditure limit for each Senate seat would have to be calculated on the basis of 1972 population figures. This exercise has not been undertaken.

single-election limit — or, at most, the $84,000 limit including the fund-raising allowance, though that allowance would probably be eaten up by the added cost of raising small contributions.

TABLE I

Table of 1972 and 1974 House Races Comparing Reported Candidate Expenditures (Common Cause Figures)[1] with the Numbers of Candidates Making Such Expenditures

Reported Expenditure Level[4]	Number of Candidates	Number of Candidates with Serious Opposition[3] in Both Primary and General Elections	Number of Candidates	Candidates with Serious Opposition[3] in Both Primary and General Elections
	1972[2]		1974	
$ 70,000 +	245	43	247	47
$ 84,000 +	183	40	187	39
$140,000 +	64	18	53	11
$168,000 +	44	16	22	4

[1] See Appendix A, pp. A-1, A-3-A-4, *infra*.

[2] The 1972 expenditure figures are adjusted upward by 18 percent to reflect inflation between 1972 and 1974.

[3] "Serious Opposition" is defined to mean a race where the winner received less than 55 percent of the total votes cast.

[4] The figures in this column are derived as follows: $70,000 represents the statutory expenditure limit in a primary or general election, 18 U.S.C. § 608(c)(1)(E); $84,000 represents the amount just stated plus the 20 percent fund-raising allowance, *id.*, § 591(f)(4)(H); $140,000 represents the $70,000 figure doubled; and $168,000 represents the $84,000 doubled (the "combined overall expenditure limit," see Appendix A, pp. A-3-A-4, *infra*).

It is also clear that, as Table 2 on p. 91 demonstrates, the "high" spending occurs in the most competitive races, races which are truly contested.

TABLE 2

Table of Reported Candidate Expenditures (Common Cause Figures)* Comparing Average Expenditures by Candidates with General Election Outcome

House Races

% of general-election vote received by winner	1972 Number of races	1972 Average expenditure of winner (adjusted for inflation)	1972 Average expenditure of loser (adjusted for inflation)	1974 Number of races	1974 Average expenditure of winner	1974 Average expenditure of loser
70-90%	97	$ 45,700	$ 8,813	104	$ 43,693	$ 9,051
65-70%	66	49,810	18,951	43	52,272	22,437
60-65%	91	64,977	35,970	51	67,153	36,540
55-60%	60	86,867	64,428	67	86,060	62,767
up to 55%	66	126,706	119,376	106	95,544	85,606

Senate Races, 1974

% of general-election vote received by winner	Number of races	Average expenditure of winner	Average expenditure of loser
75-90%	2	$200,541	$ 15,754
65-70%	1	225,678	6,754
60-65%	8	727,207	305,300
55-60%	5	369,209	237,508
up to 55%	14	696,582	458,367

* See Appendix A, pp. A-1, A-3-A-4, *infra*.

In presidential elections, the limits are set far below the amount spent by Sen. McGovern in 1972 even when no adjustments are made for inflation. In presidential campaigns, moreover, the need to expend money in excess of the challenged limits is especially crucial. Given the importance of the President's role, and the history of expenses in past presidential campaigns, Findings I, 89, pp. 52-53, App. II-49-51, limiting expenditures in those campaigns must drastically alter the interplay of forces affecting presidential elections. See, *e.g.*, Findings II, A 71, p. 110; App. II-457.

The statutory limits are so low as to lack a rational basis. Thus, the parties have agreed that in the 1972 campaigns *it cost approximately 20¢ to make one mail or telephone contact with a voter.* Findings II, B 40, p. 200; App. II-580. The Senate limit is only 8¢ in the primary and 12¢ in the general election, plus 20 percent for fund raising.

The court below argues that great deference must be shown to Congress' judgment on this matter (op. at 1541). Quite apart from the fact that such deference in the context of this case is a virtual abandonment of the First Amendment, since any limit on speech could then turn on "facts" conclusively determined by the legislature, there is a way to test that judgment. *By use of the frank Congress has shown its judgment as to what are reasonable costs of communication with voters.* In the year 1974, over $38 million was spent on the congressional frank, Findings I, 36, p. 21, App. II-23, while major-party challengers spent in all primary and general-election campaigns a total of $20.2 million, Findings II, A 14, 24, pp. 89, 92, App. II, 442,444, for all their activities such as media, mailings, staff, rent, telephones, transportation, printing, etc. For the year 1976, $46.1 million has been budgeted for the frank, while all the campaign activities of challengers are now subject to the FECA limits. Given the interest of incumbent members of Congress in limiting their challengers' expenditures, while

stead increasing their own expenditures which are not subjec o the limits but produce political effects, to show great deference to congressional judgment in this case would be intolerable.

Not only will the limitations on expenditures have a dramatic rather than an incidental effect on political communication; they lack rational basis in other ways. For example, the Federal Election Commission has ruled that a candidate may spend up to the limit in a completely unopposed contest for nomination. FEC Notice 1975-27, 40 Fed. Reg. 36242 (Aug. 19, 1975). That a House candidate can spend $70,000 to win a completely unopposed nomination, but only $70,000 in a hotly contested general election, is a bizarre result of the statute. Moreover, the statute creates an incentive to spend up to the limit in unopposed primaries, in order for a candidate to increase his expenditures having general-election impact beyond the general-election limit. 33 *Cong. Q. Wkly. Rep.* 1242 (June 14, 1975). Total spending may thus be *increased* in some campaigns as a result of the statute. Indeed, this Court is asked to sustain legislation which is based upon the "skyrocketing" cost of campaigns, but which says that a Senator in New York can spend — and indeed is given a new incentive to spend — a million dollars seeking a completely unopposed nomination. A candidate who faces stiff opposition in a primary will clearly be disadvantaged if his general-election opponent can spend up to the limit in an unopposed primary which for all practical purposes is spending for general-election purposes. The magnitude of this disadvantage will largely depend on the wholly fortuitous variable of state-established primary dates; the later the primary — and some are as late as September — the greater the effect on the general election.

The FECA limits take no account of differences in primary dates or differences in state laws as to how a

nomination is won. Thus, in a state where primaries result only if a party's convention nominee is challenged, the limit cannot safely be spent ahead of the convention and not at all after it if no challenge occurs. See, *e.g.*, Conn. Gen. Stats. Ann. §§ 9-381 - 9-452, (1958).

Finally, the limits take no account of the countless variables which affect the cost of elections. See Findings I, 4, p. 2; App. II-5-6. From district to district and from state to state there are enormous differences in media coverage and media cost. *Id.* I, 86, pp. 50-51; App. II-49. In some districts and states there may be concentrated centers of population, while in others voters may be dispersed. Some candidates may find their greatest sources of strength in rural reas while others find theirs in urban areas, and their relative costs of communication may vary widely. Yet the challenged statutes irrationally tie all campaigns to the same Procrustean bed in complete disregard of the complexities of the political process. Such an exercise is not only irrational; it is potentially fatal to free political discourse.

D. *The Expenditure Limitations Are Unconstitutional Because They Discriminate Generally Against Challengers and Generally in Favor of Incumbents.*

If it can legitimately be said that the FECA limits on expenditures prevent "high" spending, it is a fact beyond challenge that successful challengers to incumbents have historically been "high" spenders.[6] Challengers are likely to

[6] The Court of Appeals stated that the District Court "properly declined" to find "undue discrimination in favor of incumbents" (op. at 1540). This statement is a misrepresentation of the fact-finding procedure below. In fact, the initial requests for findings, which included substantial requests for findings of a conclusory nature by both sides, were never ruled upon. It could be just as easily said that the District Court properly declined to find that the statutes were justified by a compelling governmental interest, a finding offered by appellees.

have low name recognition and other disadvantages which can be overcome only by a vigorous and inevitably costly campaign, no matter what the incumbent spends. The perquisites available to incumbents, moreover, entail governmental financial support of incumbent campaigns, *e.g.*, the frank. Limits only on direct campaign expenditures thus constitute a gross imbalance in ability to reach the voter, an imbalance without precedent in American history. Fleishman, "The 1974 Federal Election Campaign Act Amendments: The Shortcomings of Good Intentions," 1975 Duke L.J. 851, 878-89 (1975) (hereinafter, "The 1974 FECA Amendments").

The following table, based on Common Cause figures[7] for candidate expenditures adjusted for inflation, reflects the percentage of winning challengers in House races at each level of spending:

Percentage of Winning Challengers Compared to Percentage of Winning Incumbents at Various Spending Levels

Reported Expenditure Level	1972 % of Winning Challengers	1974 % of Winning Challengers
0 - $ 70,000	0%	28%
over - 70,000	100%	72%
$ 70,000 - 84,000	10%	20%
84,000 - 140,000	50%	38%
140,000 - 168,000	0%	13%
over 168,000 -	40%	3%

Findings II, A 3, 5, pp. 7-27, 32-58; App. II-269-318, 326-86.

[6] (continued)

To the extent that the Court of Appeals addressed the statistics in the record as to campaign spending in previous years, it relied entirely on comparisons with the so-called "combined overall expenditure limitations," which are misleading for a number of reasons. See Appendix A, pp. A-3 - A-4, *infra*.

[7] See Appendix A, p. A-1, *infra*.

In 1972, according to the same figures, the successful challengers spent an average of $148,115. This spending, moreover, almost surely was mostly in the general election, for in 1972 only 2 of the 10 winning challengers ran in a primary and received less than 55% of the vote. In 1974, of the 29 successful challengers who spent over $70,000, only 10 ran in a primary and received under 55% of the vote. *Id.*

In the 1972 Senate general elections, five challengers defeated incumbents. If adjustments are made for inflation between 1972 and 1974 and general-election spending is estimated by the Cole method,[8] all five spent at least 14.4¢ or $180,000; in short all exceeded the limits set by the FECA Amendments. In 1974, two Senate challengers won. Of these, one spent more than the overall combined expenditure limit, according to Common Cause figures. Findings II, A 30, p. 94; App. II-445. The other reported spending substantial sums after his primary date. September 12, 1974, which, if allocated to the general election, exceeded the 1974 limit. *Id.* II, C 3, pp. 210-13; App. II-587-94.

The facts thus are clear. Successful challengers to incumbents tend to be "high" spenders. (This is so even when the 1974 races are taken into account, races in which Republican incumbents were severely disadvantaged by the Watergate scandal and presidential and vice-presidential resignations.) Successful campaigns for change require substantial financial expenditures if they are not to be buried under the *status quo.*

Since the limits imposed on spending are, according to agreed facts, well below even one contact per voter (for the Senate, 12c per voter against a stipulated 20c cost of one contact, Findings II, B 40, p. 200, App. II-580), a candidate who begins with a low name-recognition factor (challenger) will have grave difficulty competing with one with a high name-

[8] See Appendix A, pp. A-2 - A-4, *infra.*

recognition factor and many previous voter contacts (incumbent).

There is thus a "floor" of spending which challengers must reach to be "viable," to obtain the voter recognition that enables a campaign to attract votes. The Senate challengers or campaign managers interviewed by Roland Cole in 1972 all said they needed a certain amount for their campaign, regardless of what was available to the incumbent opponent. Findings II, B 7, p. 192; App. II-574.

The marginal utility of initial spending is much greater to challengers than to incumbents. Each dollar spent by challengers below the "floor" of viability brings them a much greater return than that received for the same amount by incumbents. Once the challenger reaches that "floor" he has a viable candidacy. A limit can thus prevent challengers from ever gaining viability. Indeed, since campaign money is subject to the law of diminishing marginal returns, high-spending challengers may win even though outspent by their incumbent opponents.

The most dramatic example of high spending as a force for change is the McCarthy New Hampshire primary campaign. Although dubbed the "Children's Crusade" and portrayed by the media as largely a volunteer effort, McCarthy in fact spent $12 per vote received ($18 adjusted for inflation), Findings I, 43, p. 23; App. II-25. (Richard Nixon spent 67¢ per vote in the 1968 general election.) A considerable television and radio effort at the end of the campaign, moreover, was used to increase McCarthy's name recognition. Alexander, *Financing the 1968 Election* 39 (1971). Without that spending, his efforts and those of his supporters would have been in vain.

In the economic marketplace, a high level of advertising correlates with a high level of introduction of new product brands, Telser, *Advertising and Competition,* Journal of Political Economy (Dec. 1964), at 537. The

newcomer obtains more value out of its initial spending than the familiar product does by spending an equal amount on advertising. Few would doubt that a limit on advertising for automobiles, restaurants, or movie theaters would hamper newcomers. Similarly in politics, a low limit on expenditures will generally work to the advantage of incumbents and discriminate against challengers.

This phenomenon has been widely recognized by a wide variety of commentators on campaign financing, including appellees in statements made before this litigation was commenced: Herbert Alexander of the Citizens Research Foundation, *Hearings on S. 372, supra,* at 223-24; Russell Hemenway of the National Committee for an Effective Congress, *Hearings on S. 23, et al., supra,* at 75; appellee John Gardner, *Hearings on H.R. 7612 and S.372 before the Subcommittee on Elections of the House Committee on Administration,* 93d Cong., 1st Sess. 388 (1973), and Fred Wertheimer of appellee Common Cause, *Hearings on S. 23, et al., supra,* at 269. It has also been widely recognized in Congress. Among supporters of the FECA Amendments who have stated their belief that the challenged expenditure limits generally work to the advantage of incumbents are Rep. Frenzel, H.R. Rep. No. 93-1239, *supra,* at 151-52, and 120 *Cong. Rec.* H. 7846 (daily ed. Aug. 7, 1974); Rep. Brown, *id.,* H 7831; Sen. Clark, *id.,* S 18529 (daily ed. Oct. 8, 1974); Sen. Biden, *id.,* S 18534; and Sen. Cannon, *id.,* S 18535.

That incumbents frequently outspend their opponents is no answer to the argument that expenditure ceilings generally discriminate against challengers. Incumbents without serious opposition quite typically are easily able to outspend their opponents. Thus, in the chart reflecting House expenditures printed *supra,* p. 91, it is clearly demonstrated that the gap in average spending by winners and losers decreases with the closeness of the election. Thus where the winning percentage is 70 percent or greater, spending is relatively low and winners outspend losers

roughly 5 to 1. Where the winning percentage is 55 percent or less, however, spending is much higher and the gap virtually disappears. Since most big winners are incumbents and the limits do not seriously affect those races, the principal impact of limits will be on those close races in which usually spending is already fairly equal. Permitting spending in unopposed primary campaigns, moreover, clearly disadvantages challengers since they are unlikely to have substantial funds available at early dates.

Although the issue of "skyrocketing" campaign costs is presumably a matter for all to be concerned about, the idea that each House of Congress should set its own expenditure limits permeated the debate over the FECA Amendments. Particularly in the Senate, supporters of S 3044 admonished its opponents that it was the "prerogative" of the House of Representatives to "write its own ticket." Remarks of Sen. Kennedy, *120 Cong. Rec.* S 4470 (daily ed. March 26, 1974). See also remarks of Sen. Cannon, *id.,* S 4548; at S 4930 (daily ed. April 1, 1974), stating that if the House wished to lower its expenditure limitation to $50,000, "that would be perfectly all right with us"; and at S 5273 (daily ed. April 4, 1974).

Moreover, Sen. Cannon, as Chairman of the Senate Committee on Rules and Administration and a floor manager of S 3044, and of the subsequent Conference Committee bill, also admitted that he did not believe "the precise question was raised [in the hearings] as to whether the incumbent ought to get less than the person who is the challenger." Sen. Cannon then stated, "but in simple frankness, *if we wrote into the bill a different figure, we would kill the bill.*" 120 *Cong. Rec.* S 4940 (daily ed. April 1, 1974) (emphasis added). See also remarks of Rep. Pritchard, *id.,* H 7801 (daily ed. Aug. 7, 1974).

No wonder. Not only do incumbents have political advantages which can be overcome only by spending, but they

receive direct financial support from tax money which is not affected by limits on either contributions or expenditures.

Although difficult to quantify, the direct tangible support provided by the government to each House incumbent is almost $1 million per term. See p. 51, *supra.* Incumbents have paid staff, free telephone, office space in Washington and three offices in their home districts, subsidies for stationery and office supplies, access to inexpensive television and recording facilities, use of the frank, and many other benefits, all in addition to the normal benefits of incumbency such as high visibility in their districts and the ability to make news. Findings I, 24-33, pp. 15-21; App. II-16-23.

The FECA provides, moreover, that use of the television and recording facilities in non-election years is not to be treated as an "expenditure," 2 U.S.C. § 434(d), see, *e.g.*, Findings III, Steiger 11-12, p. 37; App. II-730. This permits the incumbent to do his filming in the year prior to an election, and leave only the cost of editing to be counted toward the spending limits.

Obviously, all of these services are frequently used for deliberate political purposes. Even when they are not, the most scrupulous Congressman will obtain a political advantage from them. *Id.* III, Steiger 7, 9-17, pp. 36-38; App. II-729-32. Appellants by no means contend that perquisites of incumbents which enable them to serve and communicate with their constituents are unjustified. But communication by challengers plays as critical a part in the political process.

Communication with constituents by incumbents necessarily yields political benefits. Similar communications by challengers must be paid for and are a campaign expenditure. An incumbent can have staff research issues and write policy papers on them. Challengers can do the same only by expending campaign resources. Challengers must rent offices. If a challenger wants to call a meeting, he must normally hire a hall and advertise it, while an incumbent member of Congress may be able to hold a well-publicized hearing in his home district. In raising small contributions, an incumbent has an advantage in that he has mailing lists which are regularly used, while the challenger must normally purchase or develop them on his own. Findings II, B 63, p. 205; App. II-584.

Consider just the effect of the frank. In the first two weeks of October, 1974, the House and Senate mailed 21.8 million pieces of franked mail. During the same two-week period in non-election year 1973, only 10.5 million pieces of franked mail were sent out. The average cost for the use of the frank per member of Congress per term is equivalent to $104,000, and rising. Expenditures on the frank in election years are almost twice the total amount spent by congressional challengers on all their campaign activities. This ratio may be increasing, since $46.1 million has been budgeted for use of the frank in fiscal 1976, $7.4 million more than in fiscal 1975, while challengers must spend within the FECA limits. *Wall Street Journal,* June 2, 1975, at 5, col. 1.

In addition, the use of direct-mail specialists and mass-mailing techniques applied to franked mail during election years clearly provide electoral benefits. They enable incumbents to build up mailing lists and experience in direct mail which are invaluable in raising small contributions.

These perquisites, moreover, are entirely within the control of incumbents, who can and do raise them at will. Indeed, the same House committee which passed on the challenged statutes also has control over the levels of these incumbent resources.

In the last five years, the number of congressional employees has grown from 10,000 to 17,000. Find-

ings I, 26, pp. 18-19; App. II-21. Office staffs of House members have been increased from 16 to 18 (an increase of 870 employees at a cost of nearly $10 million); the permament staffs of thirty House committees have been increased from 12 to 30; and the House Rules Committee (which passed on the FECA Amendments) recently voted to give each of its members a legislative assistant, thus tripling the size of the committee's staff. All committee chairmen and ranking minority members are to be entitled to another staff member in addition to the total allocated to their committees. Washington Post, June 1, 1975, at A9, col. 1. The Senate Rules Committee recently voted in favor of a proposal that would provide every Senator with a staff member for every committee on which he sits, unless he already has one designated (an increase for the entire Senate of approximately 100 staff members). Washington Post, June 4, 1975, at A8, col. 1.

In addition, the House has increased the number of paid trips to a member's district from 21 to 32, and has allotted tax money to pay for the printing of two newsletters per member. One editorial accurately described these increases as "re-election firepower." Wall Street Journal, June 3, 1975, at 15, col. 9.

In the sole passage of its opinion which may have reference to incumbent perquisites, the Court of Appeals said only that "any advantage gained by incumbents from service to their constituents is neither novel nor pernicious. Indeed, this may be a vindication of the principles of democracy" (op. at 1541). With all due respect, this is not a convincing apologia for legislation which prevents challengers from presenting their views and candidacies effectively.

Examining the impact of the challenged expenditure limitations without mentioning the enormous monetary advantages which incumbent office-holders appropriate themselves from the Treasury, as did the court below, is to ignore critical and manipulable political variables. Indeed,

it is like starting a basketball game with one team leading 50 to 0, and then "evenhandedly" limiting both teams to the same number of shots at the basket. Given the ample resources which incumbents put at their own disposal, the FECA is not even facially evenhanded. What it limits are *all* expenditures by challengers and *some* expenditures by incumbents.

In no sense, therefore, do the FECA Amendments "open up the system." They are "incumbents' protection" legislation which will freeze the *status quo* and further decrease the responsiveness of government to the people. Indeed, they will thus aggravate what may be the primary ill of the American political system: the security of incumbent officeholders. Political scientists are in agreement that since World War II incumbents have become much more likely to be reelected. Kostroski, Plaintiffs' April 3 "Documents," Ex. K, at 1217-18. Erikson, *id.*, Ex. F, at 1240. See also Cowart, *id.*, Ex. B, at 852; Cummings, *id.*, Ex. C, at 69; and Mayhew, *id.*, Ex. N, at 313-15.

The security of incumbents can hardly be denied.[9] As Charles Clapp said in his classic work on the House, "There is a tendency to believe that, aside from isolated instances where an overriding issue is present, there is little excuse for

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[9] David Broder has made the point cogently and concisely:

> "If you are an incumbent in office, you are in a strong position to publicize yourself and your views. So when you set limits—and I think this applies to questions of new parties versus established parties, challenging candidates versus incumbent officeholders, establishment views versus nonestablishment views—in every instance, when you limit expenditures on an across-the-board basis, what you are really doing is saying 'We are systematically going to tilt the thing in favor of those who already hold power and their points of view.'" ABA Special Committee on Campaign Reform, Symposium on Campaign Financing Regulation, 30 (1975).

defeat." 120 *Cong. Rec.* S 4938 (daily ed. April 1, 1974). In 1966, 25 out of 26 incumbents who ran for reelection in the Senate won, 20 out of 24 in 1968, 23 out of 26 in 1970, 20 out of 25 in 1972 and 21 out of 25 in 1974. In the House, the figures are even more dramatic. In 1966, 362 of the 402 who ran won, 396 of the 405 in 1968, 379 of the 390 in 1970, 366 of the 379 in 1972 and 343 of the 383 in 1974. The 1974 turnover, of course, followed the unprecedented resignations of a President and Vice President. Of the 40 who lost, 36 were members of their party. Findings I, 17, pp. 9-11; App. II-12-14. See also *id.*, I, 19-23, pp. 12-14; App. II-14-16. Indeed, between 1954 and 1968 only 8 percent of the House members and 15 percent of Senators running for reelection were defeated. It is precisely because incumbents are so secure that challengers have little chance to win unless they can spend substantial amounts.

There can be no question that a law restricting political communication in a way that discriminates against challengers and favors incumbents is unconstitutional, *Williams* v. *Rhodes*, 393 U.S. 23 (1968); *Gould* v. *Grubb*, 536 P.2d 1337, 1345 (Cal. 1975). There are no countervailing governmental interests to justify such discrimination. If the First Amendment protects anything, it protects political communications by citizens trying to unseat those in power, *Sweezy* v. *New Hampshire*, *supra*, 354 U.S. at 250-51.

E. *The Limits Imposed by the FECA Amendments Violate the First and Fifth Amendments Because They Discriminate Against Certain Candidates and Parties.*

The majority below declared that the FECA was "without discrimination based on party . . . " (op. at 1518). In fact, the statute on its face prevents independent candidates from spending as much as party-sponsored candidates, prevents some party-sponsored candidates from spending as much as others and permits parties with na-

tional committees to spend more in presidential elections than those without. The court below never addressed these discriminations. No compelling interest is offered to support them. There is none to offer. They are demonstrably inconsistent with every tenet of a free society.

The FECA allows national or state political parties to expend 2¢ per adult on behalf of each of their candidates for federal office. 18 U.S.C. § 608(f). Independent candidates, lacking party structures, are not entitled to receive such additional support. This leaves independents unable to spend as much as their opponents, a patent violation of the Constitution. (The Republican Party is planning to raise and spend $20 million in private funds in 1976, twice as much as ever before. Broder, "The GOP's Financial 'Loophole,' " Washington Post, Sept. 14, 1975, at B 6, col. 3.) This discrimination cannot be cured simply by requiring independents to establish a party on "paper"; much of an independent's appeal, as Sen. McCarthy believes, is lack of connection with a party, an important asset at a time of alienation from the major parties. McCarthy dep. tr. 8-10; Monroe aff. ¶ 7.

The constitutional rights of party candidates are also infringed by limiting their spending while giving their state and national committees an option as to whether to support them with the permitted extra expenditure. If for some reason a candidate has alienated those who control the committees or does not receive the money for other reasons, he will face an opponent whose expenditure limit is greater than his. This also is a patent violation of the Consitution, serving no rational purpose, let alone a compelling governmental interest.

In addition, parties such as the Conservative Party of New York, which do not have a national committee, Findings III, Mahoney 2, p. 11, App. II-708, are not entitled to the extra expenditure on behalf of their candidate for President

as are parties with a national committee. Such a restriction demonstrably harms the Conservative Party, its candidates and its supporters, whether it nominates a candidate for President nominated by one of the two major parties or someone else, Mahoney aff. §§ 7-8.

These distinctions between various kinds of party committees, other formal political committees, and informal associations are unprecedented in American election law and serve no purpose other than discrimination. As such, they infringe the rights of speech and association, and work an invidious discrimination among different kinds of political movements.

IV.

The Limitation on Independent Expenditures Violates the Constitution.

Title 18 U.S.C. § 608(e) prohibits persons or groups completely independent of any candidate from spending more than $1,000 per year "relative to a clearly identified candidate" and "advocating the election or defeat of such candidate."[1] This statute makes it a federal criminal offense for a citizen to place a one-quarter page advertisement in the *New York Times* or the *Washington Post* urging his fellow citizens to vote for (or against) the President of the United States. Findings I, 65, pp. 32-33; App. II-32. As such, it is an extraordinarily explicit restriction on individual political activity and one without precedent in the history of the republic. Section 608(e) and the First Amendment cannot stand together. One or the other must fall.

A more sweeping intrusion upon free political expression is difficult to imagine. No person or group, no matter how independent of any candidate, may spend more than $1,000 to speak, so long as that speech is construed as "advocating the election or defeat of" a candidate.[2]

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[1] 2 U.S.C. § 434(e) imposes, on all those who make such expenditures in excess of *$100* per year, onerous disclosure and reporting requirements. See pp. 189-92, *infra*. The Act thus captures independent political speech coming and going.

[2] The history of Section 608(e) itself suggests its unconstitutionality. It was designed to avoid the problems raised by the candidate-certification requirement of Title I of the FECA of 1971, which required that the media, before accepting advertisements "on behalf of" candidates, obtain certifications from candidates that the advertisements purchased would not cause the candidate to exceed the media spending limit. In the case of advertisements derogating a candidate, the media had to determine a lack of any connection with the opposing

(continued)

The limitation on independent expenditures applies no matter how critical is the choice between candidates or issues. Unforeseen events may vastly change the stakes in an election or raise new and critical issues near the end of the campaign, which an individual or group may wish to address. Yet, once the $1,000 is expended, any further speech is a federal crime.

The limit is *not* to be adjusted to changes in the Consumer Price Index.[3] Not only is the limit low, and getting lower because of inflation, but it takes no account of differences in costs between areas, media outlets, and kinds of activities suited for particular issues, *id.* I, 86, pp. 50-51; App. II-49.

The Senate Report justifies the drastic limiting of independent expenditures as "the best compromise of competing interests in free speech and effective campaign regulation." S. Rep. No. 93-689, 93rd Cong., 2d Sess. 19 (1974). The Report also states that "the bill [S. 3044] preserves to everyone *some* right of political expression . . . ,"

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[2] (continued)
candidates. When the New York Times refused to accept an advertisement offered by the American Civil Liberties Union and appellant NYCLU, which listed the members of Congress who voted against President Nixon's busing proposals but was not accompanied by the required certifications, the statute was challenged and held unconstitutional, *ACLU* v. *Jennings*, 366 F. Supp. 1041 (D.D.C. 1973), *vacated as moot sub nom. Staats* v. *ACLU*, 43 U.S.L.W. 5043 (1975).

To avoid the unconstitutional prior restraint of the candidate-certification mechanism, Congress instead enacted a flat monetary ceiling on the same speech.

[3] Since expenditures by candidates and parties *are* so adjusted, the discrepancy between what campaigns can do and what private citizens can do in the way of political speech, already great, will become steadily greater. No reason for this irrational discrimination has to our knowledge ever been suggested.

id. (emphasis added). See also H.R. Rep. No. 93-1239, 93rd Cong., 2d Sess. 6 (1974).

Preserving "*some* right of political expression" is not sufficient to pass constitutional muster. "*Some* right of political expression" would be preserved if *Mills* v. *Alabama, supra, Miami Herald* v. *Tornillo, supra,* or even *New York Times* v. *Sullivan, supra,* had gone the other way. The preservation of "*some* right of political expression" is simply not what the First Amendment is about.

For Section 608(e) to be sustained, it would have to be assumed that individual citizens and independent groups have nothing to add to the public debate. Under Section 608(e), virtually all political activity must now be absorbed by, and emanate from, candidates' campaigns and party committees and the institutional press. Issues not adequately debated by the campaigns, and not deemed significant by the institutional press, are simply not to be discussed except in the abstract. This is no trivial matter, for candidates frequently avoid delicate issues, and the only way such issues can be discussed is through independent activities by persons and groups hoping to influence the campaign and the election.

While the institutional press certainly contributes in major, essential ways to public debate, and its power to do so must remain completely untrammeled, *see, e.g., Miami Herald* v. *Tornillo; Mills* v. *Alabama, supra,* the First Amendment's protection of freedom of expression comprehends much more than the rights of the institutional press. Paid advertisements, like the humblest flyer or leaflet expressing views on public issues—"every sort of publication which affords a vehicle of information and opinion," *Lovell* v. *Griffin*, 303 U.S. 444, 452 (1938)—*are part of the press themselves. Accord, New York Times* v. *Sullivan, supra; Martin* v. *Struthers*, 319 U.S. 141 (1943); *Branzburg* v. *Hayes*, 408 U.S. 663, 704 (1972); *Bigelow* v.

Virginia, supra. Paying for the publication of such materials is the principal type of independent expenditure prohibited by the statutes. The FECA's restriction on independent expenditures thus undercuts a primary forum for the expression of opinion on public questions, namely, the paid "editorial" advertisement which "communicate[s] information, express[es] opinion, recite[s] grievances, protest[s] claimed abuses . . ." or seeks financial support for important social movements, *New York Times* v. *Sullivan,* 376 U.S. at 266. There, the Court ruled that to deny such advertisements First Amendment protection because they are paid for "would discourage newspapers from carrying editorial endorsements of this type, and so might shut off an important outlet for the promulgation of information and ideas by persons who do not themselves have access to publishing facilities—who wish to exercise their freedom of speech even though they are not members of the press," *id.*

While the legislation exempts most[4] newspaper stories, commentaries and editorials from the limitations on independent expenditures (18 U.S.C. § 591(f)(4)(A)), this explicit protection of the organized press cannot serve as a kind of constitutional trade-off justifying the suppression of independent speech and press. It turns the First Amendment on its head to suggest that, because a newspaper publisher remains free editorially to endorse a candidate for President, it can constitutionally be made a crime for anyone else to take out an advertisement in the same newspaper which does no more than set forth the text of the editorial. Freedom for news stories and editorials is a necessary prerequisite for a free society, see, *e.g., Grosjean* v. *American Press Co.,* 297 U.S. 233 (1936); *Estes* v. *Texas,* 381 U.S. 532 (1965), but it is by no means the only prerequisite. See *Police Department of Chicago* v. *Mosley,* 408 U.S. 92 (1972), striking down on equal-protection grounds a city ordinance prohibiting labor picketing near schools while other picketing was prohibited.

[4] Even newspapers and other media are embraced by the statute if "owned or controlled by any political party, political committee, or candidate," 18 U.S.C. § 591(f)(4)(A). Matter in such organs deemed favorable to a candidate is thus subject to the expenditure and independent-expenditure limitations of the Act. The Framers, who were intimately familiar with press organs controlled by political parties or candidates—a connection typical in their time, see Mott, American Journalism 124 (1950), and frequent throughout our history—would have been astonished at the notion that such organs did not enjoy full First Amendment protection.

By the same token, institutional political parties play a vital role in the American political process, shaping policies and candidacies. And restrictions on such activities would also be unconstitutional. See, *e.g., Kusper* v. *Pontikes, supra; Jennes* v. *Fortson, supra.* But protecting, and indeed enhancing,[5] the power of political parties cannot be a constitutional substitute for the right of independent political speech and press.

The freedom to make independent expenditures relating to elections is particularly important for groups not committed to political parties or political candidates. They may well disfavor the positions of all the candidates but on balance prefer one to the others, as in Professor Rosenthal's example of the 1968 campaign button "Reluctantly for Humphrey." Rosenthal, *Federal Regulation of Campaign Finance: Some Constitutional Questions* 35, n. 75 (1971) (hereinafter *Federal Regulation).* Such activities, like appellant Mott's "negative research" project on the sources of presidential candidate Muskie's campaign contributions, Findings III, Mott 14, p. 29, App. II-724, may well force a candidate "off the dime," thus raising the level of campaign debate.

[5] A group of political scientists recently concluded that one of the major effects of the FECA is to magnify the power of party committees and structures because of their ability to make additional expenditures on behalf of their candidates. ABA Special Committee on Election Reform, Symposium, *supra, passim.*

The court below held that the limitations on expenditures and contributions will not be fully effective if individuals and groups can make independent expenditures (op. at 1530). See also S. Rep. No. 93-689, *supra*, 18. That logic, however, compels a complete prohibition of the discussion of candidacies outside the control of campaigns. For it can hardly be contested that demonstrations, rallies, newspaper articles, television coverage, and the like—let alone explicit editorial endorsements of a candidacy—also tend to undercut spending and contribution limits to the extent they benefit one candidate over another. And often that benefit is far more valuable than a $1,000 expenditure.

That the prohibition of Section 608(e) is "flatly unconstitutional," Alexander M. Bickel, in Rosenthal, *Federal Regulation*, *supra*, at 66, seems beyond doubt.[6] See *Hallihan*, "The Federal Election Campaign Act Amendment of 1974: The Constitutionality of Limiting Political Advertising by the Non-Candidate," 3 Fla. St. U.L. Rev. 266, 282-89 (1975); Fleishman, "Freedom of Speech and Equality of Political Opportunity: The Constitutionality of the Federal Election Campaign Act of 1971," 51 No. Car. L. Rev. 389, 473-77 (1973) (hereinafter "Fleishman, The FECA of 1971"); Redish, "Campaign Spending Laws and the First Amendment," 46 N.Y.U. L. Rev. 900, 920-21 (1971); Emerson, *The System of Freedom of Expression* 639 (1970).

Section 608(e) cannot be saved by the Court of Appeals' view that it does not forbid "issue" activities which are not "relative to" particular candidates or do not advocate their election or defeat (op. at 1530-31). Even as so

[6] The ABA Special Committee on Election Reform stated that ". . . limits on independent citizens and groups present substantial legal questions because of their potential curtailment of First Amendment rights." ABA Report at 5. The ACLU similarly opposes a limit on independent expenditures. ACLU Report at 12-13 (1975).

limited, the statue is flatly unconstitutional for all the reasons set forth above.

The majority's construction, moreover, raises a host of other problems. Speech on public issues can rarely go forward without mentioning the conduct of public officials; and if those officials are candidates for federal office, the restrictions of the section potentially arise. As one commentator asked, "[w]here does advocacy of a principle end and support of a candidate begin?" Rosenthal, "Campaign Financing and the Constitution," 9 *Harv. J. Legis.* 359, 393 (1972) (hereinafter, "Campaign Financing").[7]

In its effort to narrow the statute's reach, the Court of Appeals added additional language ("clearly" advocating the election or defeat of a candidate, as opposed to relating "primarily" to issues of public policy) which can only confuse the already vague and sweeping contours of the section.[8] In such circumstances, the vagueness has "some of the evils of a continuous and effective restraint."

[7] George Agree posed the following scenario as a graphic example of the intractable nature of the problem:

> "In 1968, I got some money together for a group of black leaders who, late in October, addressed a message in a full page ad in the New York Times, to Gene McCarthy. And it said, 'Please do not turn your back, Senator McCarthy.' And it went on, from black people, with a long text on why he should come out in favor of Humphrey. Now, to whom do you attribute that expenditure. These were black people who felt that a public personality was not properly cognizant of the issues of concern to them, and who addressed a message to him in the open. What do you do about that?" ABA Special Committee on Campaign Reform, Symposium, *supra*, at 100.

[8] A continuous stream of questions will arise as to whether language such as *"In Your Heart, You Know He's Right"* or *"Goldwater for Halloween"* advocates an issue or a candidate.

United States v. *Harriss*, 347 U.S. 612, 633 (1954) (Douglas, J., dissenting).

As a consequence, groups such as the NYCLU or the Impeachment Committee will still have to guess whether their issue advertisements and statements come within Section 608(e) as amended by the Court of Appeals, and will still have to draft every such pronouncement with an eye toward how the staff and members of the FEC will interpret it. Independent groups and individuals will thus face a triumvirate of unacceptable choices—drastically tailoring their message to avoid the statute's reach, publishing their message at the risk of criminal penalties, or seeking the FEC's approval.

Moreover, the "loophole" is not closed if *"X means nuclear holocaust; Y means peace and prosperity"* is not prohibited. All that will happen is that some lawyers will turn from drafting bond indentures to drafting political slogans.

In any event, present case law gives special recognition to the preferred position of speech about public officials and political candidates. Indeed, ". . . it can hardly be doubted that the Constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office," *Monitor Patriot Co.* v. *Roy*, 401 U.S. 265, 272 (1971). Into this area of uniquely vital discourse comes now Section 608(e), with the result that the Constitution protects the right of individuals to make relatively outrageous statements about candidates while Section 608(e) would prohibit them from making very many statements about them of any kind.

The difficulties of enforcing Section 608(e) must also cause serious constitutional questions. Because it will necessarily entail highly individualized inquiry by the FEC and the courts into the actions of individual citizens, the

likelihood of particularized and discriminatory enforcement is considerable. Close scrutiny of those who make independent expenditures will be necessary, or else Section 608(e) will soon become "more loophole than law." Surely a newspaper knowingly publishing an advertisement which violates Section 608(e) is aiding and abetting the crime, and an FEC regulation requiring that newspapers send to the FEC all political advertisements with the name of the purchaser and the amount paid would vastly aid enforcement efforts. Even now, 2 U.S.C. § 434(e), compels anyone making independent expenditures of more than *$100* to file detailed reports with the FEC, a chilling invasion of individual privacy.

There is no precedent whatsoever for such a drastic limitation on individual political activity. In *Civil Service Commission* v. *National Association of Letter Carriers*, 413 U.S. 548 (1973), this Court upheld certain Hatch Act limitations on political activities by government employees. The Court took care to indicate that the limitations could be justified, if at all, only by the nature of public employment: "the government has an interest in regulating the conduct of its employees that differ[s] significantly from those it possesses in connection with regulation of the speech of the citizenry in general," *id.* at 564. The Hatch Act, moreover, allows the option of leaving public employment, a sacrifice to be sure, but considerably less than that needed to avoid Section 608(e)—leaving the United States. The "judgment of history," *id.* at 567, that the federal civil service and partisan political activity should not be intertwined finds no parallel here. American citizens are not servants of the state.

V.

The FECA Limits on the Size of Individual Contributions Are Unconstitutional.

A. *Wholesale Limits on Individual Contributions Violate the First Amendment.*

The court below, in two paragraphs, held that Congress has virtually unlimited power to limit contributions to candidates (op. at 1528-29). Such a pervasive ruling disregards the impact of such stringent prohibitions on donors, candidates, supporters of candidates, volunteers and on political communication generally. Because the Court mistakenly assumed that equality in fact, rather than merely in the abstract, would be furthered, it endorsed a statutory scheme which enhances the power of organized economic interests by suppressing the political activity of others.

The FECA Amendments (a) limit contributions by individuals and most groups to candidates for federal office to $1,000 per election; (b) limit to $25,000 the aggregate contributions to candidates by an individual per election; and (c) limit to $5,000 contributions by political committees which have been registered for six months and have received contributions from over fifty persons. 18 U.S.C. § 608(b). Incidental expenses of volunteers, *e.g.*, travel expenses, become a contribution when in excess of $500. *Id.*, § 591(e) (5). The expenditure of personal or family funds by candidates is limited to $25,000 in House races, $35,000 in Senate races, and $50,000 in the case of the Presidency. *Id.*, § 608(a).

Two basic arguments were employed by appellees and the court below to justify these proscriptions: (1) the need to avoid the reality and the appearance of corruption, and (2) the need to avoid the reality and appearance of "undue influence," particularly by "special interests," with the

wealthy having a "stronger political voice than the unwealthy" (op. at 1515-17).

In either case, concern over "appearances" cannot justify such legislation. If it "appears" that corruption abounds or that the wealthy have too great a voice, the voters have an easy and effective remedy so long as there is proper disclosure. To assert that a blanket proscription is necessary to avoid an "appearance" is to say that voters cannot be rational and cannot react to appearances as well as the sponsors of this legislation. *Civil Service Comm'n* v. *Letter Carriers*, 413 U.S. 548 (1973), is wholly distinguishable since, in the case of partisan activities by governmental employees, disclosure is not a remedy responsive to the governmental interest at stake there, because civil servants are not elected.

The *reality* of corruption is serious, but not a compelling justification for the particular FECA restrictions. Appellees and the court below rely heavily on instances of illegal corporate or union contributions, Findings I, 112-21, pp. 99-107, App. II-148-54, evidenced by numerous indictments handed down under prior law (18 U.S.C. §610). New legislation which, apart from certain provisions not challenged by appellants, *e.g.*, 18 U.S.C. §615, adds nothing to previous law in this area is not a responsive remedy. The failure to enforce old laws is no justification for regulating unrelated conduct which was previously lawful. It would have to be shown, at the least, that the old statutes had proven unenforceable even though diligent attempts at enforcement had been made, and that nothing short of the new approach would be effective. None of this has even been alleged, let alone demonstrated.

If a small minority of political contributions are given to secure appointments for the donors or some other *quid pro quo*, that cannot serve to justify prohibiting all large contributions, the vast majority of which are given not for

any such purpose but to further the expression of political views which the candidate and donor share. Where First Amendment rights are involved, a blunderbuss approach which prohibits mostly innocent speech cannot be held a means narrowly and precisely directed to the governmental interest in the small minority of contributions that are not innocent. *Aptheker* v. *Secretary of State, supra; United States* v. *Robel, supra.* Moreover, there are available a host of narrower regulations, which the majority below did not address, which would limit or eliminate improper contributions while leaving genuine political advocacy untouched.

To the extent a remedy is called for, properly drafted disclosure provisions provide it. Value judgments about the merits of a cause are for the voters. If they believe, after the full facts are made available, that a candidate is unduly swayed by the influence of "special interests," they can demonstrate their displeasure effectively. That disclosure is effective is strongly suggested by the ultimate result of Watergate.[1]

The court below suggested that limits on contributions can be upheld in the name of equality of political voice (op. at 1517). That contention is at odds with the law of this Court. In *Miami Herald Publishing Co.* v. *Tornillo, supra,* this Court held that a state may not compel a newspaper to print a reply to an editorial attacking a political candidate. If such a legal requirement were im-

[1] As the ACLU has noted, "[b]ig contributions may have a corrupting influence on one campaign and an indispensable role in getting a dissenter started in another. *Limits on contributions are only defensible if the price we wish to pay for reducing corruption is favoritism for the status quo.* If, instead, we want to limit corruption while placing no greater obstacles in the way of dissenters than exist anyway, the proper course is to require disclosure of potentially corrupting contributions. That way, voters can refuse to elect candidates because of their obligations, but the government can't step in to prevent a candidate from being heard." ACLU Report at 17.

posed, the Court reasoned, newspapers would be reluctant to write controversial editorials or print other controversial matter. The Court explicitly recognized that its decision permitted papers to attack candidates who have little recourse. Similarly, the Court struck down a bar on last-minute election editorials by newspapers, even though an adequate response by an attacked candidate might not be possible. *Mills* v. *Alabama, supra.*

In both these cases, the challenged statute sought to bring about evenhandedness and equality in political debate. This Court, however, struck them down because they would have reduced the level of communication by deterring the publication of controversial material, even though it was assumed, *arguendo,* that the challenged legislation would enhance equality of "political voice." These cases stand foursquare, therefore, for the proposition that *government may not attempt to bring about equality of political speech by reducing the total level of political communication.*

The cases relied on by the court below, invalidating the poll tax, *Harper* v. *Virginia Board of Elections,* 383 U.S. 663 (1966), large filing fees, *Bullock* v. *Carter,* 405 U.S. 134 (1972), and malapportionment, *Reynolds* v. *Sims,* 377 U.S. 533 (1964), are perfectly consistent with the *Tornillo* and *Mills* principle and, if anything, demonstrate the invalidity of the FECA.

Each case cited by the Court of Appeals involved a disadvantage or disability directly imposed by governmental action which was on its face inconsistent with the maintenance of a high level of political communication. Each, moreover, might well be thought to favor incumbent officeholders. In the case of reapportionment, for example, the steadfast refusal of incumbents to correct even the most

patent inequities was well known.[2] Finally, the disadvantage to those excluded—denial of the right to be a candidate, to vote, or to cast an undiluted vote—was beyond question.

By contrast, private campaign financing does not involve governmental action; rather it is the FECA which constitutes the act of government that intrudes on an open and freely operating political process. In addition, the FECA effects a deliberate reduction in the level of political communication. Further, the FECA aids incumbents by, *inter alia*, limiting expenditures, *supra*, pp. 79-106, limiting contributions, *infra*, pp. 127-40, vesting the power of appointment of two-thirds of the FEC commissioners in Congress, *infra*, pp. 193-210, and subjecting the exercise of FEC discretion to congressional control, *infra*, pp. 208-10. These considerations clearly suggest the unconstitutionality of the FECA under *Harper*, *Bullock*, and *Reynolds*.

One who is prevented from voting by a poll tax is disadvantaged by government in a way that is simply not the case where the non-contributor is concerned. Contributions increase the level of political information at the voters' disposal by increasing the level of communication. The First Amendment embodies a policy which places a high value on political debate, and contributions plainly work to that end.

The "inequality" rationale assumes that non-contributors are disadvantaged by the campaign contributions of others. That is not the case: those who opposed the war in 1968 were in no conceivable sense disadvantaged by the fact that Sen. McCarthy was enabled by large, private contributions to run a viable campaign in New Hampshire.

[2] *Cf.* San Antonio Ind. School Dist. v. Rodriguez, 411 U.S. 1, 17-18 (1973) (Bullock v. Carter described as involving a state filing fee which "effectively barred all potential candidates who were unable to pay the required fee").

Non-contributors who shared Sen. McGovern's views about the redistribution of income were not disadvantaged by the $636,882 Sen. McGovern received by the time of the 1972 New Hampshire primary but which the FECA would outlaw. Those who favored the cause of civil rights were not disadvantaged by President Johnson's ability to raise funds in 1964. Large contributors are thus often functional representatives of other people who are not themselves contributors.[3]

Contributions run to all kinds of candidates and all kinds of causes. The record demonstrates beyond any possible doubt that campagn money knows no ideological limits. That is patently true of presidential races. And certainly the notion that private campaign financing runs in large amounts only to those who champion the interests of the wealthy is a myth. Among the candidates in the most expensive twenty-five House races in 1972 were:

Candidate	*Expenditures*
John Kerry	$279,746
Paul McCloskey	321,558
Abner Mikva	218,543
Allard Lowenstein	285,475
Robert Drinan	199,703
Andrew Young	159,431
Ronald Dellums	100,853

Findings II, A 8, pp. 76-81; App. II-422-31.

Equality seems furthered by limits on contributions only if the rhetoric employed focuses solely on the contributor and does not afford a true perspective of the role of

[3] As Prof. Rosenthal has succintly stated, ". . . inequality in the power to persuade voters (whether for financial or other reasons) is not the same as inequality in the right to vote." Rosenthal, "Campaign Financing," *supra*, at 376.

large contributions. Large contributions must also be viewed in terms of the recipients and supporters of the recipients, and they are often society's underdogs.[4]

"Fat cats" like Robert Morris and Haym Saloman financed the American revolution, Steeg, *Robert Morris: Revolutionary Financier* 169 (1954); Barnard, *This Great Triumvirate of Patriots* 43, 67 (1971). In the next century wealthy northerners like Arthur and Lewis Tappan, Francis Jackson, and Richard Fletcher sustained the abolitionist movement in its early years. Lader, *The Bold Brahmins* 71-72, 82 (1961).

After the Civil War, organizations like the NAACP relied on the contributions of Oswald Garrison Villard and Julius Rosenwald (who spent $60-$70 million in helping minorities) and others. Eventually the NAACP expanded its financial base, but in 1914, for example, "more than half the income of the NAACP came from eighteen individuals." Kellogg, *NAACP, Volume I: 1909-1920* 106 (1967). The Urban League's history is similar. In Chicago, as elsewhere, "during the opening period several large pledges were obtained to provide the initial impetus for the campaign." Strickland, *History of the Chicago Urban League* 97 (1966).

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[4] The simple way to avoid disadvantaging low-income groups is to encourage the dissemination of *more* political information, not less. When less information is available to voters, low-income citizens are the chief victims. As one scholar explained:

> ". . . the cost of information is harder for low-income citizens to bear; hence more of them are likely to be uncertain because they lack information. Since uncertainty reduces the returns from voting, a lower proportion of low-income groups would vote even if voting costs were equally difficult for everyone to bear." Downs, An Economic Theory of Democracy 273 (1957).

Other examples abound. Albert DeSilver sustained the ACLU for many years; the early twentieth-century peace movement depended on Andrew Carnegie and Edward Ginn, and Bernard Baruch sponsored slum clearance and hospitals. *ACLU 1924 Annual Report; ACLU 1928-1929 Annual Report;* Coit, *Mr. Baruch* 197, 454 (1957). Today, huge foundations continue as patrons of unpopular causes. The messages of such causes began as unpopular whispers shunned by the press and misunderstood by most people. No legislature would have ever voted them funds. In order to join the national debate, all of these reform groups looked successfully to wealthy patrons.

The history of certain of the appellee organizations also shows the need for initial large contributions. Appellee Center for Public Financing of Elections received in 1973, for example, $68,751 from 23 contributors (an average per contributor of almost $3,000). Findings I, 69, p. 33; App. II-32. A member of appellee Common Cause Board of Directors testified that large contributions were crucial to the organization's creation. Palevsky dep. tr. 76-77. Common Cause has received approximately $70,000 from the Rockefeller family alone, including $55,000 from John D. Rockefeller III and $1,500 from Nelson Rockefeller, *id.* 87, p. 51; App. II-49.

Much of this history is misunderstood because it is assumed that each dollar is of the same value to every movement and that any difference in fund-raising ability is an intolerable inequity. That is not the case. The financial resources available to NAACP and the National Association of Manufacturers (NAM) have been disparate throughout this century, but one has brought about a social and legal revolution while the other has been fighting a largely rearguard action. Had there been no private financing, the positions of the NAM would have nevertheless received sub-

stantial exposure and support, because it represents the *status quo*, while those of the NAACP would have survived, if at all, as a largely unheard, underground movement. The value of each dollar to the well-publicized *status quo* position is always less than to a nascent movement pressing society to move in a new direction.

What is true of organizations is also true of political candidates. The challenger, the underdog, and the candidate espousing change need large contributions to get started if a serious challenge is to be made. Thus, in the following section, pp. 127-38, *infra*, we will demonstrate how candidates espousing new ideas or challenging incumbents needed large amounts of money initially to wage a viable campaign.

Finally, equality of political communication is not a goal which law can pursue without great peril. Short of silence—the only state in which communication is in fact equal—legal restraints are likely to bring about more rather than less inequality. The distribution of political resources is in no way "equal" and is simply not subject to "equalizing" without drastically reducing the amount of political speech. As David Broder has pointed out, "[l]egislation that eliminates the dollar influence on politics automatically enhances the influence of those who can provide manpower or publicity for the campaign." 120 *Cong. Rec.* H 7813 (daily ed. August 7, 1974).

The statute distinguishes between the volunteering of personal services and the contribution of money used to purchase those services, 18 U.S.C. § 591(e). It thus distinguishes between the lawyer who contributes his services to a candidate to aid him in complying with the complexities of the FECA, and his contribution of money because he has fallen ill and is temporarily disabled. As with economic resources, political resources are often fungible. To the participants (whether they be donors, recipients or supporters), the contribution of services and the contribution of money are functionally similar activities.

This functional similarity not only permits the extension of limitations to other activities but seems actually to mandate it, as the FECA provisions demonstrate in the limitation on independent expenditures and disclosure of those that are made if greater than $100, and in the limitation of incidental expenses of volunteers. Large contributors tend to be activists in many ways, most of which involve substantial expenditures. Thus appellant Mott, a heavy financial contributor to various campaigns, has also contributed to a number of other organizations and causes and views all these contributions as essentially similar. Findings III, Mott 1-21, pp. 26-32; App. II-721-26. Another example is Martin Peretz, a heavy contributor to congressional campaigns, *id.* II, A 117, p. 139-41, App. II-478-81, who has also funded the SDS and *Ramparts* magazine and has bought *The New Republic*, *id.* I, 138, p. 129; App. II-190. All such activities further the political goals and purposes of the individuals involved, as do campaign contributions.

There are at least thirty ways of participating in the political process, *Id.* I, 5, p. 2-4, App. II-68, only three of which (v, x and y) are regulated by the challenged statutes, even though many others are of comparable or greater effectiveness than campaign contributions and involve the use of money for political purposes. Some people have considerable free time; the media involve concentrated economic unity and wield enormous political influence; and incumbent officeholders possess numerous resources which benefit them politically. None of these are touched by the statutes.

Limiting financial contributions to candidates only magnifies all these other inequalities. Indeed, the effect of the $1,000 limitation may well discriminate in favor of the very wealthy. While the moderately wealthy must forgo a

$3,000 contribution, the very wealthy form study groups, own newspapers and magazines, or engage in extensive political activity because of their resources and free time.

The rhetoric of equality of speech, moreover, is rhetoric which must in the end sweep away free political communication. It is a short step to apply that rhetoric to the media, especially to such large economic entities as the television networks, *Washington Post*, the *New York Times*, and the *Chicago Tribune*. Findings I, 60-64, pp. 30-32; App. II-30-32. One already sees such stirrings. Phillips, *Mediacracy* 24 *et seq.* (1975). Indeed, logic itself—not to mention equality—suggests it is totally irrational to permit William Loeb, publisher of the *Manchester Union Leader*, broad freedom to employ economic resources to attack a candidate while restricting the right of that candidate's supporters to employ economic resources in defense. The concern of the court below that the "wealthy few" not have "a stronger political voice than the unwealthy many . . ." (op. at 1517) is a concern which strikes as directly at the press and electronic media as at campaign contributions.

Limits on individual contributions will, moreover, induce potential political contributors to donate funds instead to "issue" groups. That, in turn, may create additional pressure for Congress and the courts to see that "issue" organizations also are regulated in the way that political campaigns are — a clearly unconstitutional approach, op. at 1549-60, *ACLU* v. *Jennings; United States* v. *National Committee for Impeachment, supra.* The Conference Report's suggestion that disclosure be extended to "issue" groups because "they use their resources for political purposes" is a chilling reminder of just how slippery the slope is. S. Rep. No. 93-1237, 93d Cong., 2d Sess. 83 (1974).

Finally, the equality problem is democratically resolved by disclosure of large contributions with a potential for influence. If a candidate is taking "too much" money

from large contributors, the citizens have swift and effective recourse. And that, rather than the restriction of political communication, is the remedy that should be relied upon in a democratic nation which trusts its voters.

B. *The FECA Limits on Contributions Discriminate Against Challengers to Incumbent Officeholders and Against Minor Parties and Independent Candidates in Violation of the First and Fifth Amendments.*

> "[L]ower limits on campaign contributions, *by themselves, would serve to increase the advantages incumbents presently have in fund raising.*"

This bald, unequivocal statement is from the Senate Report accompanying the FECA. S. Rep. No. 93-689, *supra*, 10 (emphasis in original). Because the original Senate version of the FECA Amendments, S. 3044, provided public funding for all federal (not just presidential) elections, the Senate Committee on Rules and Administration could be candid about the impact of the FECA limits on the size of contributions. As passed, the FECA Amendments contained no public financing for congressional elections. The Committee statement thus stands as a flat admission that the contribution limits discriminate in favor of incumbents. Rep. Anderson, a leading sponsor of the FECA Amendments, stated a similar proposition in the House debate on H.R. 16090, 120 *Cong. Rec.* H. 7924 (daily ed. Aug. 8, 1974).

Why the Report's frank admission is demonstrably true is illustrated by Congress' refusal to provide services to challengers. For example, it would be a simple matter to allow use of the franking privilege to any candidate on the ballot. This was rejected in the Senate on the grounds that it was far too complicated, a pitifully inadequate excuse. S. Rep. No. 93-689, *supra*, at 5.

We have already shown (pp. 86-104, *supra*) the many advantages incumbents have in election campaigns and the extent to which these advantages are enhanced by a limit on expenditures. The limits on the size of contributions operate to the same end. In effect, incumbents can vote themselves the equivalent of large contributions in the form of more staff, offices, franked mail, etc., while challengers are severely hampered in the fund raising which is necessary to purchase those items. The statute in effect limits, therefore, *some* contributions to incumbents and *all* contributions to challengers.

Appellees contended below that, because the percentage of money received in contributions over $1,000 is greater for incumbents than for challengers when the figures for all congressional elections are aggregated, the statute will not have any harmful effect on challengers. Findings II, A 55, p. 103, App. II-452; *compare id.*, A 115, p. 133 at p. 135; App. II-473, 475. By its own terms, this argument is true only if the marginal value to the candidate of a dollar contributed to a challenger and of a dollar contributed to an incumbent is the same. Since the marginal utility of money is greater to challengers than to incumbents, appellees' figures themselves demonstrate that the limitation on individual contributions discriminates against challengers. Cole dep. tr. 376-79. Because limits on contributions reduce the amount of campaign money available to challengers, they have precisely the same effect as limits on expenditures.

Even on an *a priori* basis, appellees' theory is erroneous. The limits on contributions will necessitate new fund-raising methods, principally greater reliance on direct-mail techniques. The agreed facts establish, moreover, that incumbents have advantages over challengers in raising small contributions. They are well known; they are experienced in dealing with their constituents through the mail; they have mailing lists (both from use of the frank

and from previous fund-raising efforts) which may be used with some assurance of success and which require less in reporting costs because the required information is on the list; and they can utilize the mailing-list facilities of the Senate computer. Findings I, 24 and 37, pp. 15-18, 21; App. II-16-20, 23-24. Direct mail is also a time-consuming process which incumbents can generally begin earlier, using their offices as a base, while challengers are still seeking nomination. *Id.* I, 24, p. 16, App. II-16-20; Keene dep. tr. 14-15.

Appellees' evidence, moreover, is totally misleading, in that it aggregates *all* congressional elections without any regard to the enormous variances among such elections, and is thus virtually useless in analyzing *particular* campaigns. Appellants have compiled figures, Findings II, C 9, p. 257, App. II-679, on the amount of "overage"[5] in House races in which challengers to incumbents made a serious run and received 45 percent of the vote or more.

When closely contested campaigns are considered, it is clear that the viability[6] of many challengers is derived in large part from contributions which the FECA would prohibit. These figures, derived from Common Cause's statistics, Findings II, C 6, p. 249, App. II-665, demonstrate beyond any question the role large contributions can play in making challengers viable. In such races, incumbents start with cash on hand while challengers for the most part do not. Challengers also rely much more heavily than do incumbents on loans, which are not included in the aggregate figures. *Compare id.* II, A 52, 60,

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[5] "Overage" is defined as amounts received in contributions, including loans, in excess of $1,000 per individual and in excess of $5,000 per political committee.

[6] A particular campaign is considered politically "viable" if it is able to mount an effective (whether or not successful) challenge.

pp. 101-05, App. II-451-54, *with* II A 115, pp. 133-39; App. II-473-78. The amount of overage raised by challengers in these races is also greater. Finally, for those challengers who had total overage exeeding $3,000, the large contributions or loans were generally received earlier in the campaign than the overage received by the incumbents they faced, indicating that such early, large contributions performed the important function of "seed money."

"Seed money" or "up-front money" was defined by the Court of Appeals to be ". . . the critical mass of money to be applied at the outset of a campaign to establish a 'viable' candidacy. For a campaign that intends to rely upon small contributions solicited by direct mail, for example, the seed money would be the cost of an initial direct mailing and associated expenses" (op. at 1532 n.85). Appellees deny the validity of this definition and claim there is no evidence that seed money in large contributions is an essential component of a viable campaign. They are wrong.

In 1974, incumbent Senators seeking re-election had $1,402,083 in cash on hand on September 1, 1973. Challengers had $21,676, *id.* II, C 15, p. 268; App. II-697. In Senate races in which challengers received at least 45 percent of the vote, challengers had received 53.8 percent of their overage by October 1, 1974, while the incumbents had received only 31.8 percent of theirs by the same date. *Id.* II, C 6, p. 249; App. II-665.

In the 1974 House races in which challengers received 45 percent of the vote or more, incumbents had $398,097 cash on hand while challengers had $68,051 as of September 1, 1973, *id.* II, C 10, p. 267; App. II-697. If one excludes Rep. Price of Texas, an incumbent who borrowed and repaid $74,000, incumbents reported $66,913 in repaid loans, while challengers had $136,936. Incumbents had $110,798 in overage while challengers had $181,253. In the forty races in which challengers defeated an incumbent, incumbents had $72,723 in overage, while challengers had $110,894. Repaid loans are not included in the overage figures. *Id.* II, C 10-13, p. 267; App. II-697.

In the nineteen 1974 House races in which a challenger received over 45 percent of the vote and had over $3,000 in overage, 56.0 percent of that overage was on hand by October 1, 1974, and thus represented vitally necessary seed money, while incumbents had received only 35.5 percent by that date. In twelve of the nineteen contests in which the challengers won, 70.8 percent of the challengers' overage was received by October 1, while incumbents had only 44.7 percent. *Id.* II, C 6, p. 249; App. II-665.

Early money in contributions exceeding $1,000, therefore, is important to challengers in establishing viability. Indeed, it is well known in the political world that seed money plays a terribly important role for those challenging incumbents. Findings III, Buckley 11-23, pp. 3-7, App. II-701-02; Mahoney 5, p. 12, App. II-709; McCarthy 4-8, pp. 18-19, App. II-714-15; Wertheimer 2-5, pp. 45-46, App. II-737. Incumbents have high name recognition and other political advantages, *id.* I, 31-32, pp. 20-21; App. II-22-23. Additionally, incumbents have an entire term in office to raise money for the next campaign, and many of them are thus able to begin it with a substantial amount of cash on hand as well as the perquisites of office.

The court below recognized the need for seed money and, indeed, relied on this need to uphold the higher ceilings on personal and family expenditures.

Record evidence demonstrating the critical importance of "seed money" to challengers' campaigns show the following:

Julian Bond, 1975 Campaign for the Democratic Presidential Nomination

Bond is the first candidate for a party's 1976 presidential nomination to abandon his campaign. He did so explicitly because he was unable to raise seed money:

> "One candidate who thinks his inability to raise seed money is hurting his 1976 campaign is Julian Bond, the Georgia state senator who has said he wants to run in selected black districts to collect delegates for bargaining purposes at the Democratic convention. Atlanta City Council member James G. Bond, the candidate's brother and campaign manager, said in an interview that the limit on individual contributions 'is a disaster as far as our campaign is concerned. As a result of this law, Julian's probably not going to be able to run.'
>
> James Bond said that Morris Dees, the Democratic direct mail specialist who raised funds for George McGovern in 1972, 'told Julian he could raise several hundred thousand dollars if he could raise $20,000 to start. Several people said they were willing to lend it to him, but that's illegal.' He said that the requirement that candidates get their seed money in small contributions works hardest against people who represent poor constituencies. 'Julian's base is the black community, and it's not a rich community,' Bond said." Malbin, "New Campaign Finance Law Faces Legal, Political Tests," *National Journal Reports* (July 12, 1975), 1011, at 1018.

Thomas Bradley, 1973 Los Angeles Mayoralty Campaign

Bradley was victorious in the 1973 Los Angeles election for mayor. Max Palevsky stated under oath in the present case:

> "In 1973, I ran the campaign to elect Tom Bradley Mayor of Los Angeles. The records of the Bradley campaign show that of the approximately $1.5 million raised, virtually all of the critical early money came from large contributions in excess of $5,000. In the Bradley campaign the central issue, in my opinion, was electing a black in a city which is predominantly white. In order to deal with the fears and apprehension of some of the population, it was imperative that Mr. Bradley be seen as often as possible in the media. Mr. Bradley's constituency was not in an economic position to provide the funds needed for this effort. The funds could only be raised, in my opinion, from wealthy contributors. Of the initial half million dollars raised, over 85% came in contributions in excess of $1,000. Without these contributions, in my opinion, Mr. Bradley could never have won either the primary or the run-off election for mayor." Palvesky aff. ¶ 7.

James L. Buckley, 1970 Senate Campaign

Buckley defeated an incumbent Senator, but he would not even have run had he not had assurances that at least $100,000 in seed money could be raised quickly. Findings III, Buckley 11-13, p. 3, App. II-701-02. The Buckley campaign began with a $50,000 loan from a personal friend. *Id.*, Buckley 14, p. 4, App. II-702.

The Buckley race is typical of the crucial importance of early large contributions, and the uses to which they are put. Sen. Buckley required a campaign headquarters and a telephone bank (for contacting voters). Because landlords and utilities in New York City require advance deposits, Sen. Buckley could not even begin his campaign without substantial sums of money, Findings III, Buckley 20-23, pp. 6-7; App. II-704-05. The District Court found that "[i]n

fact, the agents for the building in which Senator Buckley's campaign sought and finally rented space would not even talk to campaign officials unless they appeared with a certified check for the entire amount they desired," *id.*, Buckley 22, p. 6; App. II-704. The amounts involved were $18,000 for rent and security deposit for the headquarters and $18,000 in deposits for the telephone bank, *id.*

Much of the early $50,000 loan went into a direct-mail campaign that eventually raised $650,000. More than 40,000 persons contributed to the campaign, and 35 percent of those gave less than $20 apiece, *id.*, Buckley 17-18, p. 5; App. II-703. Without the early large contributions, however, Sen. Buckley believes that his campaign would have been doomed from the outset, much as his unsuccessful 1968 campaign was, *id.*, Buckley 15-16, 19, pp. 4-5; App. II-702-04.

Ramsey Clark, 1974 Senate Campaign

Clark, a well-known former Attorney General, publicly associated with a number of causes with substantial constituencies in New York State, relied entirely on contributions of $100 or less. He was able to raise "seed money" of between $12,000 to $15,000 from friends and acquaintances to launch his appeals for small contributions. His response on direct mail was between 5 and 7 percent, or considerably better than the normal 2 or 3 percent. Nevertheless, because he relied on small contributions he could not get money when it was needed, and could not even make a rough estimate as to how much would be available for the general-election budget until a month after the primary. The cost of raising money thus greatly reduced the amount that he had available for campaign purposes, Findings I, 182-90, pp. 180-83; App. II-260-62.

Indeed, Clark stated that Sen. Javits appeared to outspend him by a ratio of 3 to 2 when, in fact, because of the extra cost of raising small contributions, he was really outspent 2 to 1. Clark received only 38 percent of the vote. *Id.* I, 185, 191, pp. 181-83; App. II-261-62.

Walter D. Huddleston, 1972 Senate Campaign

The Huddleston campaign for Senator from Kentucky began with a $50,000 loan from the state party and a $200,000 bank loan. *Id.* II, B 17, p. 196; App. II-576. Huddleston was elected, in a race between two nonincumbents.

Eugene J. McCarthy, 1968 New Hampshire Presidential-Primary Campaign

Sen. McCarthy did unexpectedly well in the New Hampshire primary, and his performance was a major factor in causing an incumbent President not to run for reelection. Sen. McCarthy received at least $71,000 (when adjusted for inflation since 1968, the total is over $90,000) in contributions which would have been illegal under the FECA, Findings III, McCarthy 4, p. 18; App. II-714; *id.* I, 181, p. 179; App. 260.

George S. McGovern, 1972 Campaign for the Democratic Presidential Nomination

Sen. McGovern's ultimately successful campaign for the Democratic presidential nomination began with contributions totalling $28,813 as of January 1, 1971. Of that $27,813, $15,500 would have been illegal under the FECA. Between January 1, 1971 and February 1, 1972, Sen. McGovern would have lost a total of $468,811 (including Max Palevsky's guarantee of Frank Manckiewicz's $150,000 salary). Between February 1 and March 10, 1972, three days after the New Hampshire primary, Sen. McGovern would have lost another $152,000. Indeed, from the beginning of his campaign until three days after the New Hampshire primary, the FECA would have barred a total of $636,882 in contributions to Sen. McGovern. Since

direct-mail techniques require that much of the return in contributions must be plowed back into more mailings, these large contributions were critical to McGovern's early efforts, Palevsky aff. ¶¶ 2-4; App. I-87-89.

Charles McC. Mathias, 1974 Senate Campaign

Sen. Mathias, like Ramsey Clark, limited contributions to his campaign to $100 or less. However, he had $50,000 already on hand when he imposed this limitation and had already spent money on unspecified pre-campaign obligations. He was, moreover, a well-known and popular Senator with a high-name recognition and the other perquisites of incumbency, Findings I, 172-79, pp. 175-79; App. II-257-60.

Edmund S. Muskie, 1972 Presidential Campaign

Sen. Muskie's unsuccessful campaign for the Democratic presidential nomination began with contributions from 40 contributors totaling approximately $600,000. 33 *Cong. Q. Wkly. Rep.* 1239 (June 14, 1975).

What experience demonstrates, common sense confirms. Direct-mail campaigns are necessarily very expensive, and cannot begin without substantial seed money. One contact by a candidate with one voter using the mails costs 20 cents, Findings II, B 40, p. 200, App. II-580, and the initial returns from direct-mail fund raising are often small. Indeed, the total cost of raising campaign money in this fashion is stipulated to be around 40 percent of the total eventually raised. *Id.*, B 50, p. 203; App. II-582. If challengers cannot obtain large contributions initially, their campaigns are effectively strangled at birth. Appellees strenuously maintain that there is no evidence demonstrating the necessity for seed money. They have never, however, revealed where the money for initial mailing will come from. Far from closing the political system, large early contributions

are truly the "seeds" that enable candidacies to flourish and become viable.[7]

The seed-money phenomenon applies to referenda as well as partisan campaigns. Harold Willens, a member of the Board of Directors of appellee Common Cause, described how the funding of the campaign in favor of California Ballot Proposition 9 (a state law with contribution and expenditure limits similar to those contained in the FECA) was organized in 1974:

> "... I estimated we would need about four hundred thousand dollars. I then approached a number of people with whom I have worked and whom I have learned to respect and admire because their affluence is matched by their social concern. From this handful of people I got about forty thousand dollars which was our seed money, or start-up fund. We were then able, with this money, to do some other things that generated the rest of the money we needed." "The Campaign for Proposition 9," *The Center Magazine* (Nov.-Dec., 1974), at 43.

The experiences of current presidential candidates—except for the incumbent—demonstrate that the cost of raising small contributions is even higher than anticipated. As of July 20, 1975, Sen. Jackson had on hand 50 percent of the contributions he had raised. All other candidates had much less: Wallace 40 percent, Bentsen 33 percent, Udall 10 percent, Harris 4 percent, Carter 2 per-

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[7] The ABA Special Committee on Election Reform expressly declined to take a position regarding the appropriate amount of limitations on contributions. It did, however, believe that such limitations "... should be sufficiently high to permit meaningful expression of support ... " without allowing undue influence. ABA Report at 5. As the discussion in the text demonstrates, the FECA's limits are far too low to allow such a "meaningful expression of support."

cent, Sanford less than zero. *New York Times,* July 21, 1975, p. 10, col. 3. During this early stage of the campaign, virtually all expenditures are for fund raising.

Finally, limits on large contributions are highly discriminatory against minor parties and independent candidates. Appellant McCarthy, for example, is not permitted to receive federal funding on the rationale that his chances of winning are too insignificant for the government to waste its resources on him. He is, on the other hand, prohibited from receiving contributions in excess of $1,000 from individuals because his official decisions when in office might thereby be corrupted.

The $25,000 aggregate limit on individual contributions to candidates, 18 U.S.C. § 608(1) (3), is also likely to reduce the contributions available to third-party or independent candidates. Once the aggregate amount an individual can contribute is limited, donors are likely to want to make their limited contributions to major-party candidates with better chances of winning elections, and less likely to give them to third-party or independent candidates. McCarthy dep. tr. 101; Crane aff., ¶ 11B.

C. *The Limits on Incidental Expenses of Volunteers Violate the First Amendment.*

The FECA Amendments limit the expenses of volunteers by defining them either as a contribution or an expenditure, with a $500 exception for travel and certain other expenses, 18 U.S.C. § 591(e), (f). No provision of the FECA Amendments better typifies its repressive spirit than this. It starkly demonstrates the gross intrusion of this statute into the political activities of American citizens.

It applies to widely varied forms of typical political advocacy—the use of space in a house, the use of personal phones, travel by car, plane or train—and thus restrains all kinds of hitherto-commonplace First Amendment

activity—demonstrations, handbilling, doorbell ringing. See *Edwards* v. *South Carolina, supra; Talley* v. *California, supra.* The vistas of enforcement this provision opens are chilling. Individuals will be subjected to close audits of their personal finances because they have engaged in political activity unregulated before the FECA Amendments. Moreover, the possibilities of discriminatory enforcement (as with the enforcement of limits on independent expenditures) are endless.

Although personal services contributed by volunteers are exempted, 18 U.S.C. § 591(e)(5)(A), the effect is necessarily to reduce such services whenever some expenditure of money is connected with them. A lawyer contributing volunteer services to a Senate candidate in an effort to aid compliance with this statute might well have extensive phone bills, travel or office expenses. By limiting the expenses, the law limits the services. The limit, moreover, becomes more restrictive every day because it does not take inflation into account, *compare* 18 U.S.C. § 608(d). If Congress can do that, what kind of political activity can it not limit or forbid entirely? The limit on volunteer expenses is unconstitutional on its face.

D. *The FECA Limits on Contributions Discriminate Against Candidates Without Family Wealth in Violation of the First and Fifth Amendments.*

The limitations on contributions are likely to make it more difficult for individuals without personal or family wealth to run for office. A candidate for the House, for instance, who has personal wealth can contribute $25,000 to his own campaign, 18 U.S.C. § 608(a), thereby providing seed money. On the other hand, candidates without personal wealth are not permitted to raise individual contributions above $1,000. The result is that candidates from

wealthy families will have far greater advantages than at present.[10]

The court below suggested that the higher limits for family or personal expenditures are permissible because the chance of corruption is less in such cases (op. at 1533). Clearly, however, that is not the case, for history abounds with charges that the families of public officials have profited by their relationship.

The court also suggested that the personal expenditures could be used as "seed money" and that the number of individuals which constitutes a family is so large that "even a candidate in modest circumstances obtains the flexibility to raise useful sums . . ." (op. at 1533). Surely the court did not mean to suggest that only those candidates whose close relations can contribute $25,000 to $50,000 are entitled to raise seed money. Yet that is precisely the result of the statutory provisions and the Court of Appeals' rationale.

By distinguishing between what wealthy and non-wealthy candidates are permitted to do (*i.e.*, because the latter are barred from receiving contributions in excess of $1,000 from wealthy supporters) in terms of the exercise of First Amendment rights, the interrelationship of 18 U.S.C. § 608(a) and § 608(b) creates a clear discrimination based on wealth which impinges on interests expressly guaranteed by the Constitution. As such, they are unconstitutional. *Bullock* v. *Carter*, 405 U.S. 134 (1972); *cf. Harper* v. *Virginia Board of Elections*, 382 U.S. 663 (1966).

[10] The candidate-contribution limits for the Senate ($35,000) and the Presidency ($50,000) are greater than the $25,000 aggregate contribution limitation imposed on all other individuals, 18 U.S.C. § 608(b)(3).

E. *The Requirements for Becoming a Political Committee Which Can Contribute $5,000 to a Candidate Violate the First and Fifth Amendments.*

As in the case of limits on expenditures, the FECA makes distinctions between kinds of political committees. Political committees which have received contributions from more than fifty persons, and which have been registered for six months, are permitted to contribute to candidates up to $5,000 per election, 18 U.S.C. § 608(b)(2). The six-month limitation restricts the ability of citizens to engage in political activity which is important and timely. Interested groups and individuals will be unable to take advantage of the $5,000 limitation to respond to events occurring withing six months of an election if they have not previously organized or registered as a political committee. Important associational freedoms are thus severely restricted. Ad hoc organizations, for example, are greatly disadvantaged.

There is no reason having to do with notions of either corruption or political equality which justifies this kind of restriction on the timing of political activities, and the legislative history of the political-committee section reveals no justification. For all that appears, the statutory provisions are a deliberate measure to protect organized interest groups which have the means to support a national network of political committees on a continuing basis. For this among other reasons, organized economic interest groups have not viewed this legislation as in any way a threat to their interests. See *supra*, pp. 69-71. The state law upset in *Mills* v. *Alabama*, *supra*, which sought to prevent last-minute editorials to which an effective response could not be made, could be characterized as eminently sensible compared to this gross restriction on the timing of political speech. See also *Kusper* v. *Pontikes*, 414 U.S. 51 (1973), which held that a state may not "lock in" votes by

prohibiting persons from voting in the primary of one party until 23 months after they had voted in the primary of another party. The main effect of such a restriction, moreover, will be to increase the power of organized and established interests over other groups because such interests can more easily proliferate and maintain committees for the period required. Requiring contributions from more than fifty persons is also arbitrary, and unjustified by any evidence in the legislative history.

F. *The Limits on Contributions Violate the First and Fifth Amendments in That They Are Overbroad.*

The Constitution demands that regulation touching upon the sensitive areas protected by the First Amendment be precisely tailored and carefully related to the evil sought to be remedied. *Aptheker* v. *Secretary of State, supra; United States* v. *Robel, supra.* The limitations on contributions contains in the FECA are a frontal assault on this stricture.

The "corruption" rationale cannot meet the constitutional test when applied to legislation which forbids thousands of innocent, "pure speech" contributions for every one attempt at corruption which it may reach. See pp. 67-78, *supra.*

Moreover, the $1,000 and $5,000 contribution limitations apply no matter what office is being sought. Whether the goal is elimination of corruption or an increase in political equality, such limits make no sense in the case of campaigns for the Presidency or Senate races in large states. Candidates who must raise millions of dollars cannot be corrupted by contributions in these amounts. Where small states or House races are involved, $1,000 may or may not be a large sum depending on the total cost of the campaign. Neither appellees nor the court below has even attempted to rationalize the overall $1,000 limit.

The limitations, moreover, leave no room for any adjustment depending on the number of variables which affect the cost of elections, Findings I, 2-4, pp. 1-2; App. II-5-6. They are, moreover, getting smaller daily because of inflation. If $1,000 is in fact a rational point at which to limit contributions, its real impact should not be left to the vicissitudes of the economy. Yet Congress, while fully providing for cost-of-living adjustments to the expenditure limitations, 18 U.S.C. § 608(d), inexplicably failed to include any similar provision with respect to contributions.

The limitations on personal expenditures are thus pulled more from the air than from any kind of rational consideration of the cost of elections. The $35,000 limit on personal and family expenditures in Senate races, for example, is only $10,000 more than that permitted in House races, although the cost of some Senate elections may well be, even with spending limits, many times greater. So too, a limit of $50,000 in the case of the Presidency, with a spending limit of $20,000,000, is irrational when compared to the $25,000 limit on personal expenditures in House races, where the spending limit is $70,000. Where political rights are concerned, quantitative limitations established by the state must be related to a legitimate state interest rather than simply arbitrary figures arrived at in a random fashion. See *Kusper* v. *Pontikes, supra.*

Nor do the limits on contributions differentiate among donors. If, for example, there is concern that some groups are receiving subsidies from the government and then using those funds to lobby the government itself for more subsidies, precise provisions relating to political contributions by such groups might be upheld. See *United States Civil Service Commission* v. *National Association of Letter Carriers,* 413 U.S. 548 (1973). Similarly, if there is fear that people are buying federal offices through large contributions, the proper remedy lies in regulating contributions by appointed officials. The Senate, in the exercise of its advise-

and-consent power, could easily inquire into the political contributions of nominees for federal office, especially when aided by properly drafted disclosure requirements. If in its collective judgment the Senate believes a particular nominee has "bought" the nomination, it can simply refuse to confirm that nomination.

Nor do the limitations take differing recipients into account. Appellant McCarthy may not solicit contributions over $1,000 even though his major-party opponents in the presidential campaign will each receive $20,000,000 in federal funding. There is simply no way to justify denying him both federal funding *and* the right to solicit large contributions, particularly when the denial of federal funding rests on the legislative judgment that candidates like McCarthy have no chance of being elected.

Appellants have suggested, *supra*, pp. 75-78, a number of statutory schemes directed with precision at the kind of contributions which may legitimately be said to involve "non-speech" or improper elements. Neither appellees nor the court below have suggested why such measures are not fully adequate or why the broadside FECA approach is necessary. Rather, they have merely deferred to Congress' judgment. More is demanded where the First Amendment is at stake.

The best solution is disclosure of large contributions. The First Amendment means that political truth is a matter for individual decision in a free marketplace of ideas. *Abrams* v. *United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting). The FECA, on the other hand, reflects a distrust that voters, even when fully informed, will reject candidates who abuse campaign financing. The two approaches cannot stand together.

VI.

The Federal Subsidy Provisions Violate Article I, Section 8, and the First and Fifth Amendments to the Constitution.

A. *Funding Campaign Activities by Direct Payment to Candidates or Parties Is Unconstitutional.*

Direct government subsidies to candidates and parties are contrary to the "general welfare," U.S. Const., Art. I, § 8, because they reduce the amount of influence that citizens have over their representatives, and neuter the political process by eliminating an important means by which voters can express intensely held views on important public issues. None of the stated rationales for this legislation—the elimination of corruption, the reduction of election costs, or the diminishing of inequality of political resources—,even if fully demonstrated in the record, leads to the conclusion that candidates should be relieved of the need to raise campaign money. *Cf. Opinion of the Justices*, 197 N.E. 2d 691 (Mass. 1964); Note, Payment of State Funds to Political Party Committees for Use in Meeting Campaign Expenses Lacks a Public Purpose, 78 Harv. L. Rev. 1260, 1262-63 (1964). That result decreases political communication and political participation and relieves politicians of an important burden of their office.[1]

Grave dangers to the future of democratic government result from direct payments to parties and candidates. Democracy depends largely on free political competition and the freedom to form, join or leave political organizations. Once a party becomes officially sponsored by the government or government begins to determine the allocation of political resources, that freedom is endangered. See *Lemon* v. *Kurtzman*, 403 U.S. 602,621 (1971): "the history

[1] A decline in voter interest in party activities was one result of Puerto Rico's public subsidy program. Committee for Economic Development, Financing a Better Election System, 48 (1968).

of government grants of a continuing cash subsidy indicates that such programs have almost always been accompanied by varying measures of control and surveillance."[2]

First Amendment decisions dealing with the establishment and freedom of exercise of religion clauses are relevant by analogy here.[3] The First Amendment was designed to protect freedom of conscience, Freeman, "A Remonstrance for Conscience," 106 U. Pa. L. Rev. 806 (1958). As Thomas Jefferson said, in arguing against forcing citizens to support even ministers of their own religion:

> ". . . to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyranical . . . ." Padover, *The Complete Jefferson* 946 (1942).

As Madison, "the leading architect of the religion clauses of the First Amendment," *Flast* v. *Cohen*, 392 U.S. 83, 103 (1968), recognized:

> "In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of sects. The degree of security in both cases will depend

[2] Sen. Gambrell in 1971 introduced an amendment that would provide public subsidies only for candidates whose party national committees were "fairly apportioned and selected by a democratic process." 117 Cong. Rec. S 18906 (daily ed. November 17, 1971). Sen. Hansen introduced an amendment, also defeated, that would bar subsidies to any candidate's party which failed to pay presidential campaign debts within five years after they are incurred. *Id.*, S 19139 (daily ed. November 19, 1971).

[3] The Court of Appeals states that "no one has ever seriously argued" that these prohibitions apply to freedom of speech or association (op. at 1560-61 n. 147). But of course no scheme to establish political parties has ever been enacted before.

> on the number of interests and sects . . . ." *The Federalist*, No. 51 (Cooke ed. 1961), pp. 351-52.

See *Everson* v. *Board of Education*, 330 U.S. 1 (1947); *Cantwell* v. *Connecticut*, 310 U.S. 296, 310 (1940); *Thomas* v. *Collins*, *supra*, at 531; *NAACP* v. *Alabama*, *supra*, at 461.

In 1784-85, the Virginia assembly considered a tax check-off scheme analogous to Subtitle H, though with voluntary features absent here. "That bill levied a tax for the support of Christian churches, leaving to each taxpayer the choice as to 'what society of Christians' he wanted the tax paid." *Walz* v. *Tax Commission*, 397 U.S. 664, 704 (1970) (Douglas, J., dissenting). By his "Memorial and Remonstrance Against Religious Assessments," Madison was able to defeat the proposal. Madison wrote:

> ". . . the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever." *Id.* at 721.

Madison thus recognized the dangers inherent even in a so-called "voluntary" tax-designation system. He further noted:

> ". . . it is proper to take alarm at the first experiment on our liberties . . . . The freemen of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. *They saw all the consequences in the principle, and they avoided the consequences by denying the principle.*" *Id.* (Emphasis added.)

The establishment clause and the free-exercise clause are closely related, *Zorach* v. *Clauson*, 343 U.S. 306 (1952).

Just as the establishment of a religion or religions upsets the marketplace of religious ideas, the establishment of a political party or parties interferes in the political marketplace and infringes the free exercise of political beliefs. *Cf. Lemon* v. *Kurtzman, supra,* at 628.

In the establishment-clause cases, three requirements must be met before legislation will pass constitutional muster: (1) the legislative purpose must be primarily nonsectarian; (2) the principal effect must be neither to advance nor to inhibit particular organizations or movements; and (3) excessive entanglement in religious affairs must be avoided. *Meek* v. *Pittenger,* 43 U.S.L.W. 4596 (May 19, 1975); *Abington School District* v. *Schempp,* 374 U.S. 203 (1963). By analogy Subtitle H meets none of these tests. (1) Its plain purpose is political. (2) It clearly advances some and inhibits other political movements, see *infra,* pp. 152-64. (3) It not only involves but actually demands excessive government entanglement in political affairs.

(1) Subtitle H's prime purpose is neither nonpartisan nor apolitical but in fact the direct financing of certain political activities and certain political organizations. Indeed, there is no nonpartisan, apolitical rationale to justify relieving political candidates or parties from having to raise funds. Neither excessive spending, fear of corruption nor desire to reduce political inequality justifies direct financing of political parties and political candidates.

The priorities establishing Subtitle H, according to which the available funds are to be distributed, demonstrate its partisan and political ends. First are the national nominating conventions; second, general-election party candidacies; finally, matching grants to individuals seeking a nomination by traditional party routes. I.R.C. §§ 9008(a), 9037(a). The supports of organized party activities was clearly uppermost in the minds of Congress. Independent candidates such as appellant McCarthy are excluded.

Throughout Subtitle H there are continued references to political parties. The very term "candidate" is defined as "the candidate of a political party." I.R.C. § 9002(2)(B). Similarly, to be eligible for matching grants one must be a candidate seeking nomination by a political party. I.R.C. § 9033(b)(2). In the other parts of the statute, which place restrictions on candidates rather than conferring benefits upon them, candidates are defined broadly as individuals seeking nomination or election. 2 U.S.C. § 431(b); 18 U.S.C. § 591(b).

(2) Subtitle H inhibits and discriminates among various parties and candidates, a point discussed *infra,* pp. 152-69, as an independent ground of unconstitutionality. It should be noted here, however, that direct grants to parties or candidates necessarily involve allocative formulas, but *no* formula can ever be fair to everyone. Under every formula, some candidates or parties will be relieved of the burden of raising funds while others competing with them will continue to sustain that burden. And the government will have in effect declared to the voter that some parties are more worthy of adherence than their competitors, and that some are so unimportant as to be ignored.

(3) Direct subsidies necessarily involve excessive entanglement. They necessitate an annual or biennial struggle in Congress as to the allocation of political resources among political groups. There are simply no standards to guide such a debate other than self-interest. *Cf. Meeks* v. *Pittenger, supra,* at 4603. Congress will thus continuously debate the question of who is to have what political power. Subtitle H presently allocates $20,000,000

to each major-party candidate, a result reached when the Presidency and Congress were controlled by different political parties. Were the nation to elect a President with a large majority of his own party in the Congress, a new formula basing allocations to major parties on past performance might be enacted, just as Subtitle H bases the allocation to minor or new parties on past performance.[4]

Other forms of wholly undesirable entanglement will occur. The statute permits party committees to spend 2¢ per voter aiding some congressional candidates. 18 U.S.C. § 608(f)(3). Those party committees may well avoid supporting candidates challenging members of Congress with particular power over federal funding legislation, such as committee chairmen.

Entanglement is increased by other provisions, which are essential to the entire scheme, for the continual auditing of committees and candidates. 2 U.S.C. § 438(a)(8); I.R.C. §§ 9007(a), 9008(g), 9038(a). Furthermore, the FEC and incumbent Presidents (through the Secretary of the Treasury) are empowered to exercise discretion as to the allocation of funds among the various categories mentioned in terms of priorities and as to disbursements of matching-grant money to candidates for nomination of their own or another party. I.R.C. §§ 9004(a)(3), 9006(d), 9008(a), 9037(a), (b).

[4] "Major" parties are defined as those parties which in the preceding presidential election received 25 percent or more of the total number of popular votes cast. I.R.C. § 9002(6). "Minor" parties are defined as those parties which in the preceding presidential election received 5 percent or more but less than 25 percent of the total number of popular votes cast. *Id.*, § 9002(7). "New" parties are defined as those parties which are neither major nor minor parties. *Id.*, § 9002(8). The term "new" party thus includes not only parties created since the last election, but also all other third parties which received less than 5 percent of the vote in the preceding election.

If the exercise of political rights is to be kept free from government pressure, the courts must strike down any direct subsidizing of political parties or candidates. Otherwise, government by the people would be in grave danger of becoming government by the government.

While no one quarrels with the necessity of effective action against corruption, it does not follow that it is in the "general welfare" to relieve candidates from the need to raise private money. For example, many of the difficulties created by Subtitle H, see *infra*, pp. 152-69, can be avoided by a "voucher" scheme. See, *e.g.*, S. 1390, 94th Cong., 1st Sess. (1975). A voucher system places the subsidy money directly in the hands of the taxpayers—to be distributed as they see fit—and allows a large number of individuals to make small contributions. Candidates would have to attract these funds by addressing issues of importance to the citizens, rather than receiving them automatically from the government or through a matching-grant system. The court below felt Congress could properly provide "some choice . . . without going all the way to permit each taxpayer complete authority over the disposition of his dollar . . . " (op. at 1561-62). But choice is the essence of democracy, and if Congress is to use tax money at all, maximization of citizen choice is an appropriate safeguard.

A "voucher" scheme would not necessarily clearly pass constitutional muster or be a panacea. However, no reason for the public financing of elections justifies Congress' choosing the alternative it did, which is in fact the *most* intrusive means. As Sen. Baker wisely remarked, "there is something politically incestuous about the Government financing and, I believe, inevitably then regulating, the day-to-day procedures by which the Government is selected." 120 *Cong. Rec.* S 4457 (daily ed. March 26, 1974).[5] A

[5] Indeed, five of the seven members of the Senate Select Committee on Watergate voted *against* federal subsidies. 120 Cong. Rec. S 4560 (daily ed. March 27, 1974); *id.* S 4708 (daily ed. March 28, 1974).

"voucher" plan also easily avoids the discrimination against minor and new parties and independent candidates which Subtitle H embodies, and which we now discuss.

B. *Chapter 95 Violates the First and Fifth Amendments Because It Discriminates Against Minor and New Parties and Independent Candidates.*

Chapter 95 of Subtitle H, which establishes a system of federal subsidies for candidates in presidential general elections,[6] favors the Republican and Democratic parties while operating in a discriminatory and to some extent random fashion with respect to all others. New parties and independent candidates are severely disadvantaged when they begin their existence and most need financial support.[7] A third party which passes the statutory threshold, on the other hand, may be artificially preserved after its actual voter support has dissipated. For all of the elaborate definitions of "major," "minor," and "new" parties, the stark fact remains that in 1976 *only* the Democratic and Republican parties will receive *any* pre-election funding.

The discriminatory provisions include the following:

(1) Most grievous is the use of prior-vote criteria to determine the level of federal funding in general elections.[8] A four-year-old performance record bears no necessary rela-

[6] See pp. 10-12, *supra*, for a description of its provisions.

[7] As Senator Brock said, had the challenged statutes been in effect at the time of the emergence of the Republican Party, "the grave of Abraham Lincoln would have been just another burial plot in the cemetery." 120 *Cong. Rec.* S 4552 (daily ed. March 27, 1974).

[8] A Colorado statute enacted in 1909 granting parties funds in proportion to their voting strength was declared unconstitutional by that state's Supreme Court. McDonald v. Galligan, Col. Sup. Ct. 1910 (unreported), described in Merriam and Overacker, Primary Elections 306 (1928).

tionship to current strength.[9] Such a formula irrationally overcompensates declining parties and undercompensates those on the rise. See Rosenthal, "Campaign Financing," *supra*, at 412. George Wallace would have received nothing in 1968, while John Schmitz would have received $6.3 million in 1972, had Chapter 95 been law in those years (op. at 1606, dissent).

Prior-performance criteria make qualification and an entitlement determination for major parties simultaneous: achieving 25 percent of the vote entitles the party both to future subsidization *and* receipt of the maximum amount. Minor parties upon qualification receive an entitlement based on their past performance in relation to an "average major party vote" standard, although major parties receive the full $20 million entitlement regardless of their comparative performance. *Compare* I.R.C. § 9004(a)(1) *with* § 9004(a)(2) and (a)(3). A party with only 25.1 percent of the vote at the last election receives the full entitlement, even though it may be slipping into an even greater decline; a minor party which increases its strength in the interim will obtain financial recognition only after the next election.[10] There are bizarre results if Party A won

[9] The ABA's Special Committee on Election Reform stated "[f]unding should be determined on the basis of current voter support. Although past support at the polls is a proper method of recognizing established major and minor parties, *the ability of new parties and independents to gain support would be hampered by a process that may lock the system into the status quo.*" (Emphasis added.) ABA Report at 6.

[10] If one of the two major parties is deeply divided at its convention and splits into separate wings each fielding a candidate, those two candidates might each receive less than 25 percent of the vote. The other, united major party might obtain the rest of the popular vote, leaving under the statutory definition *only one major party*. In the next election the operation of Subtitle H would be such as to increase the likelihood that the country would be left permanently with a one-party system. In 1912, the Progressive (Bull Moose) Party received 27.4 per-

(Continued)

50 percent of the prior vote, Party B 25.1 percent and Party C 24.9 percent. Parties A and B receive $20 million each, and Party C receives $13.3 million.[11] No conceivable justification appears for the discrimination in favor of Party B and against Party C.

(2) Major-party candidates are entitled to receive the full subsidy, and minor-party candidates their partial subsidy, well prior to the November election, I.R.C. §§ 9003-9006. New parties and independents, however, receive nothing until *after* that election, *id.*[12] They have *no* alterna-

[10] (continued)
cent of the vote and the Republican Party 23.2 percent. The Progressives, although not an ongoing party in any major sense, would under Subtitle H have been entitled to the full major-party allotment for the 1916 election, while the Republican Party would have been relegated to minor-party status. Had Wilson drawn slightly more votes away from the Bull Moosers, only the Democratic Party would have been a major party under Chapter 95 in the 1916 election.

In addition, one of the two major parties has been close to the 25-percent cutoff point on two other occasions. In 1860 the Democratic candidate (Stephen A. Douglas) received only 29.4 percent of the popular vote, and in 1924 the Democratic candidate (John W. Davis) received only 28.4 percent. Only a very small voting shift in either of those years would have consigned the Democrats to minor-party status under Chapter 95.

[11] The $13.3 million figure is derived as follows: The percentage of the votes of Parties A and B are averaged to create the "average major party vote" (here 37.5%). Then, it is determined what percent of the average major party vote is the vote received by Party C (37.5% divided by 24.9%). The resulting percentage (here 66.4%) is then multiplied by the amounts received by Parties A and B ($20 million) to arrive at the $13.3 million figure to which C is entitled.

[12] Indeed, it may well be that unless their contributions come in the form of loans, new parties and independents are conceivably not entitled to *any* reimbursement after the election. A careful reading of I.R.C. §§ 9003(c) (2) and 9004(b) (1) indicates that post-election pay-
(continued)

tive by which they can demonstrate current popular support, a disability that is simply not rational. Schwartz, *Public Financing of Elections: A Constitutional Division of the Wealth* 64 (1975). They are thus forced to divert people and resources into fund raising during the campaign, while major parties face no similar burden. The post-election subsidy is a very poor—indeed almost no—substitute for pre-election payments.[13] *Cf. Williams* v. *Rhodes, supra,* at 32. Struggling parties have a greater need for, and more difficulty obtaining, money than do established parties. Indeed, these difficulties are aggravated by FECA's contribution limits, see Note, Developments in the Law—Elections, 88 Harv. L. Rev. 1111, 1269 (1975). If such parties do not receive money before the election, paying them afterwards will achieve nothing.[14]

(3) Any general-election candidate on the ballot in fewer than ten states receives no federal funding, I.R.C. § 9002(2)(B). This obviously damages any party lacking funds for getting on the ballot in ten or more states but which nevertheless hopes to exert influence either by taking

[12] (continued)
ments to new parties and to minor parties can be made only to defray campaign expenses which have not been paid for by contributions, unless such contributions were loans.

Since the terms "loan" and "contribution" are nowhere defined in Subtitle H (and since the only analogous definition, 18 U.S.C. § 591 (e), includes loans *within* the definition of contribution), it appears that new parties and minor parties which increase their popular vote are faced with a dilemma. Either they must raise contributions primarily in the form of loans, or they must forego post-election subsidies.

[13] Moreover, a new party failing to win 5 percent of the vote receives no subsidy; a subsidized party failing to meet the same standard is not required to pay funds back, I.R.C. § 9007(b).

[14] The ABA Special Committee on Election Reform stated that "[f]unds should be made available to all candidates and parties simultaneously before the election." ABA Report at 6. Adamany and Agree, *supra,* at 148, strongly concur.

the electoral votes of a few states or by affecting the results in those states. It is a classic means of influencing policy for minor parties or independent candidates to play a "balance of power" role.[15] Chapter 95 ignores, and discriminates against, this legitimate means of pursuing political goals and deprives of any federal funding parties hoping to play such a role. *Cf. Anderson* v. *United States*, 417 U.S. 211, 227 (1974).

The ten-state requirement has no rational relationship with a candidate's chances of success in the electoral college. There is no requirement that the ten states have a significant number of electoral votes. Thus, assuming all other conditions were met, a candidate on the ballots of the ten smallest states (which have a total of 34 electoral votes) would receive federal subsidies, but a candidate on the ballots of the nine largest states (which have a total of 245 electoral votes) would not. Schwartz, *supra*, at 62.

(4) Excluding from funding parties receiving less than 5 percent of the vote also equates seriousness of purpose with the ability to win, an approach which ignores the roles of third parties in our history. Such parties and independents often desire to influence the political process not by winning presidential elections but by affecting the public debate. Such was the strategy of both Henry A. Wallace and J. Strom Thurmond in 1948, and inspired the candidacies of Eugene V. Debs in 1908, 1912, and 1920. Yet Chapter 95 studiously denigrates the serious contributions of such campaigns to the national political debate.[16]

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[15] In the elections of 1836, 1844, 1884 and 1916, "a change in the outcome in one state would have given the election to the losing candidate," Schwartz, *supra*, at 59.

[16] With respect to points 3 and 4 in the text, the ABA Special Committee on Election Reform stated "[t]he role of minor parties should be recognized as a role distinct from that of major parties and (continued)

It cannot be overemphasized that at stake in the allocation of federal subsidies is the ability of the candidate and his supporters to carry their views to the electorate. Under Chapter 95, minor parties, new parties, and independents bear an even more onerous burden in convincing voters that they are serious contenders than they have previously—a burden vastly aggravated, moreover, by the new contribution limitations. Chapter 95 thus "tend[s] to silence one of the nation's most fruitful sources of new ideas." Rosenthal, "Campaign Financing," *supra*, at 413.

This Court has made clear that legislators may not lock in the two major parties by excluding all competition from new or minor parties. *Sweezy* v. *New Hampshire*, 354 U.S. 234 (1957); *Williams* v. *Rhodes*, 393 U.S. 23 (1968). As the Court said in *Sweezy*:

> "[a]ll political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups, who innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted." *Id.* at 250-51.

The courts below cited the ballot-access cases as support for sustaining Chapter 95 (op. at 1563-65). Those cases consider three state interests that might justify discrimination against minor parties. *Storer* v. *Brown*, 415 U.S. 724, 729 (1974). One—the avoidance of voter con-

[16] (continued)
legislation should not serve so as to measure minor parties by the standards applicable to major parties. Thus any system of public funding should recognize that the role of the minor parties, at least with respect to presidential elections, is to affect the election and the views of the voters. Ultimate success of the minor parties should not be the primary governing element in their treatment in a public funding system." ABA Report, at 6.

fusion by "providing the electorate with an understandable ballot," *id.* at 729—is certainly not present in this case.

The others—"encouraging compromise and political stability" and "attempting to ensure that the election winner will represent a majority of the community," *id.* —appear designed to limit ballot access to candidates likely to garner a significant level of support, *id.* at 732. These criteria thus reflect a judicial recognition that states may condition ballot-access requirements on the expected ultimate results of an election—the popular-vote totals candidates receive—so that candidates in whom the voters are more interested will be on the ballot.

Chapter 95, however, impinges on the very process by which the voters become interested and ultimate election results are obtained—communication with and persuasion of the voters. Subtitle H is thus a clear intrusion into the "robust" debate at the heart of the First Amendment, and not merely a narrowly drawn "time, place or manner" restriction on how the results of that debate are registered, as are the ballot-access requirements. As Prof. Rosenthal has said regarding the effective exclusion of third parties from federal subsidies: "It's worse not to have money than it is not to be on the ballot, because [while] write-in candidates sometimes get in, unfinanced candidates never get in." ABA Special Committee on Election Reform, Symposium, *supra*, 258 (1975).

Chapter 95 involves funding of the underlying political debate. As this Court said in *Lubin* v. *Panish*, 415 U.S. 709, 716 (1974), legitimate governmental interests "must be achieved by a means that does not unfairly or unnecessarily burden either a minority party's or an individual candidate's equally important interest in the continued availability of political opportunity." It is, however, precisely on the "continued availability of political opportunity" that Chapter 95 has its most drastic impact. It

emasculates voter choice by altering the level of political debate in favor of the two major parties. As one commentator put it ". . . if money is needed to obtain votes, and the votes obtained determine how much money one gets, the system seems inescapably reminiscent of Catch-22." Rosenthal, "Campaign Financing," *supra*, at 414.

To the extent the ballot-access cases are relevant, they support appellants' position. In *Jenness* v. *Fortson*, 403 U.S. 431 (1971), the goal of the prospective candidate-plaintiffs was to obtain a position on Georgia's general-election ballot. Under Chapter 95 the candidate's goal is to obtain the general-election federal subsidy at a time when he can use it to advance his candidacy. Under the statute at issue in *Jenness* v. *Fortson*, *supra*, there were two alternative routes to reach the goal. If a prospective candidate wished to obtain the benefit of automatic ballot placement, he had to incur the burden of seeking the nomination of a party entitled to such automatic placement, thus risking a primary fight for that nomination. If, on the other hand, a prospective candidate wished to obtain the benefit of remaining independent of the established parties, he had to incur the burden of a petition drive that would accumulate the signatures of 5 percent of the total eligible electorate. Prospective candidates under either route thus had an opportunity to reach the goal of a position on Georgia's general-election ballot, "neither . . . [of which could] be assumed to be inherently more burdensome than the other." *Id.* at 441.

Under Chapter 95, there is only one route by which a prospective candidate can reach the goal of obtaining general-election federal subsidy money before the November election—the only time at which it can possibly assist his candidacy. If a candidate wishes to obtain the benefit of such subsidy money in the amount of $20,000,000, he must incur the burden of seeking the nomination of a party entitled to the automatic payments. If, on the other hand, a candidate wishes to obtain the benefit of remaining inde-

pendent of the major parties, there is no corresponding burden he can choose to incur in order to obtain the benefit of automatic subsidy money in the amount of $20,000,000 available before the November election. He is simply denied federal subsidies altogether until after the election, and even then he is not guaranteed the full $20,000,000 but only an amount based on the ratio of his vote to that of the major-party candidates, and nothing at all if his vote is less than 5 percent. I.R.C. § 9004(a).

The courts below confused the goals at stake in the ballot-access cases and under Subtitle H with the benefits and burdens of seeking the nomination of a major party or running outside of them. They thus misconstrued the import of *Jenness* v. *Fortson*, *supra*, and other ballot-access cases, *Storer* v. *Brown* 415 U.S. 724 (1974); *American Party of Texas* v. *White*, 415 U.S. 767 (1974). Although under Chapter 95 a new-party or independent candidate may obtain some federal funding (less than $20,000,000) at some time (after rather than before the election), his candidacy is necessarily less viable because he can *never* achieve the goal above stated. Accordingly, in a self-fulfilling prophecy, the candidate will attract less support and in fact almost certainly will never obtain even the partial funding Chapter 95 purports to offer.

The *coup de grace* is administered by contribution limits, which make it more difficult for new and minor parties to raise private funds and thus to compete with their publicly funded opponents.[17] Thus, the totality of the

[17] The ACLU has stated regarding Chapter 95 "[i]t is easy to see how this provision of the FECA reinforces the status quo. It means that we are taxed to support the perpetuation of only established points of view. The American Independent Party . . . cannot get public funds in 1976. A candidate such as Norman Thomas in the 1930s and the 1940s would not only have to campaign against existing orthodoxies. He would have to do it at the expense of private contributors who were also

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invidiously discriminatory burden on protected rights created by the contribution limits and federal subsidy provisions weigh heavily against their constitutionality. *Williams* v. *Rhodes*, *supra*, at 34. Far from benefiting third parties, contribution limits are far more detrimental to challengers, see *supra*, pp. 127-38, than to incumbents. Providing the major parties with full campaign funding at the outset of the campaign compounds the injury still further.

That Congress had little use for third parties is made clear by the Senate report which, in defending Subtitle H, said that a proliferation of "splinter parties" and independent candidates "would undermine the stability provided by a strong two party system and could polarize voters on the basis of a single volatile issue." S. Rep. No. 93-689, *supra*, at 8.[18]

Rep. Conyers, who voted for final passage of the bill, argued that the 5-percent popular-vote threshold requirement for new and minor parties would preclude them from getting started. Rep. Hays replied, "I personally would like to do anything I can to protect the two party system . . . ." 120 *Cong. Rec.* H 7808 (daily ed. August 7, 1974). The bill as passed demonstrates clearly how successful Rep. Hays and his like-minded colleagues were.

[17] (continued)
taxed to support the candidates they opposed while no tax money would have gone to Thomas. These contributors to Thomas would have been limited to $1,000 and their identities would have been disclosed to the government." ACLU Report at 25.

[18] The legal and political experience of other nations subsidizing political activity demonstrates the contrary. Public subsidies to parties were introduced in Germany with only those parties then represented in the national and local Parliaments receiving public funds. The German Constitutional Court declared the subsidies invalid, holding that the constitution mandated a "free and open process of opinion and will

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Rep. Conyers' amendment to delete the 5-percent threshold, and to allocate subsidies to new and minor parties and independent candidates solely on the basis of the popular vote the candidate received, was defeated in an unrecorded vote, *id.*, H 7919. Rep. Hays, opposing the Conyers amendment, stated that the 5-percent figure was "arbitrary," an unchallenged characterization, *id.*, H 7916-17. Rep. Frenzel concurred that "we have never been able to establish a matching formula that would do justice to new parties and third parties or independent parties," *id.*, H 7916. The final legislative product amply confirms the judgment of Reps. Hays and Frenzel.

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[18] (continued)
formation leading from the people to the organs of the state, not in the reverse direction," and defining the parties as "free competing groups acting on their own behalf and independently of the state." Quoted in Heidenheimer, ed., *Camparative Political Finance*. 45 (1970).

In response, the German parties agreed on a plan that would allow subsidization of campaign expenditures. After yet another court challenge, the threshold requirement was lowered to 0.5 percent of the total popular vote.

The present German law thus contains a threshold requirement *one-tenth* the size of that contained in Subtitle H. Moreover, Germany presently enjoys, as it has since World War II, a stable "two and one-half party" system, and does not appear in danger of proliferation of parties. See generally, Schleth and Pinto-Duschinsky, "Why Public Subsidies Have Become the Major Sources of Party Funds in West Germany, but Not in Great Britain," in Heidenheimer, *supra*, at 23-49.

Scholars examining other public-subsidy schemes uniformly believe that they entrench the established parties. This entrenchment has been found in Scandinavian countries: Andren, "Partisan Motivation and Concern for System Legitimacy in the Scandinavian Deliberations on Public Subsidies," *id.* at 50-67; Canada: Paltiel, "Contrasts Among the Several Canadian Political Finance Cultures," *id.*, 119-30; Puerto Rico: Anderson, Party Politics in Puerto Rico, 28-29 (1965); and Italy: Sassoon, "The Funding of Political Parties in Italy," 46 The Political Quarterly 94 (1974).

The major-party bias permeating Subtitle H was clearly demonstrated by the debate over the tax "checkoff" provision, I.R.C. § 6096. In response to Sen. Mathias' proposal that taxpayers be allowed to designate their choice of candidates or parties, Sen. Pastore replied, "That would not be fair. What we are trying to do is to give both sides the same amount of money . . . ." 117 *Cong. Rec.* S 18891 (daily ed. November 17, 1971).

In a remarkable statement, Sen. Long further argued that his amendment preventing taxpayer designation of parties would "quit confusing people. Rather than saying both Democrats or Republicans are the party of one's choice, the taxpayer just makes a check on the tax return. . . ." 119 *Cong. Rec.* S 12196 (daily ed. June 27, 1973).

Although it is uncertain whether or not a tax checkoff system that would allow taxpayers to designate their choice of candidates or parties would be permissible, it would certainly be far less discriminatory than the present system. So would the voucher proposal; see Brief of Sen. Metcalf as *amicus curiae*. Either of these devices would ensure that subsidies were allocated in accordance with current voter support rather than with arbitrary and discriminatory percentage cut-offs and irrelevant past achievements. Such means would be better indicators of present popular support and would thereby be less destructive of First and Fifth Amendment values. Those values therefore dictate that the more intrusive means represented by Chapter 95 be stricken.

Chapter 95 clearly gives "the two old, established parties a decided advantage over any new parties struggling for existence and thus places substantially unequal burdens on both the right to vote and the right to associate," *Williams* v. *Rhodes*, *supra*, 393 U.S. at 31. See Barrow, "Regulation of Campaign Funding and Spending for Federal Office," 5 Mich. J.L. Reform 159, 187-89 (1972).

Although one of the rationales for this legislation was the diminution of the power of "special interests," two such interests have carried the day with Chapter 95—the Democratic and Republican parties. There can be no compelling governmental interest in distorting the substantive political debate in such an invidiously discriminatory fashion.

C. *Chapter 96 Violates the First and Fifth Amendments Because It Discriminates Against Certain Candidates.*

Chapter 96 establishes a system of federal funding for candidates for party presidential nominations, imposing what the Court of Appeals termed "stringent threshold requirements" for eligibility (op. at 1527). See pp. 11-12, *supra*, for a description of these provisions.

A key requirement of eligibility for payments is that a presidential candidate "is seeking nomination by a political party," I.R.C. § 9033(1), (2). Moreover, candidates must be participating in "primary elections," a term specifically defined to be an event or series of events "held by a political party," *id.*, § 9032 (7). Chapter 96 thus deprives of substantial rights all candidates, and particularly independent candidates such as appellant McCarthy, who achieve a place on ballots by petition rather than by party nomination. Obtaining ballot status in the various states requires extensive expenditures of funds,[19] whether the route be by petition or otherwise. Because Chapter 96 denies *any* money to candidates who choose that route rather than the party nomination route, it discriminates invidiously against them. *Storer* v. *Brown*, *supra*, at 746.

[19] Leaders of George Wallace's 1968 presidential campaign estimated that the organizational and legal efforts to get Wallace on the ballot in 50 states cost $3 million. Findings I, 42, p. 23; App. II-25.

The courts below ignored the fact that under the ballot-access cases independent candidates at least had an opportunity to place their names on the ballot, albeit by a different method than those obtaining party nominations. Chapter 96 provides no such alternative route. It flatly prohibits independent candidates from ever obtaining any federal subsidy money under any circumstances. There is no way that such discrimination can be constitutionally justified.

Characterizing the effects of denying funds to independents as "incidental," as did the Court of Appeals (op. at 1568), drastically understates the advantages that the major parties gain. Moreover, the Court of Appeals implied that independents *should* be eligible for general-election subsidies (op. at 1569-70), yet it gave no reason why the logic of that implication does not also apply to subsidies under Chapter 96.

American Party of Texas v. *White*, 415 U.S. 767 (1974), relied on below, is completely inapposite. First, the primary expenses defrayed by Texas were not the costs of *campaigning*, but the costs of the *mechanics* of primary-day ballot machines, ballot counting, etc. Second, Texas simply took a slightly different route to funding election-day expenses than other states, which meet such expenses out of general tax revenues. Upholding Chapter 96 on the basis of *American Party* is like saying that because the federal government pays for the upkeep of Lafayette Park, it may also defray the costs of organizing, publicizing, and holding some (but not all) of the demonstrations and rallies that occur there.

The matching-grant formula further discriminates unconstitutionally by requiring applicants for matching funds to become eligible by raising $100,000 in contributions of $250 or less, in 20 states, not exceeding $5,000 per state, I.R.C. § 9033(b) (3) and (4). This formula has no rela-

tionship whatsoever to the manner in which candidates are nominated or elected to the Presidency. Such a requirement discriminates against a candidate with very substantial regional backing who is denied the opportunity to expand his support because of the lack of matching grants. It is, moreover, in flat conflict with *Moore* v. *Ogilvie*, 394 U.S. 814 (1969), which held unconstitutional an Illinois statute requiring independent nominating petitions to contain 25,000 signatures, including 200 each from 50 of the state's 102 counties.

The Court of Appeals' statement that the "20-state requirement simply reflects the realities of Presidential campaigning" (op. at 1568) is unsound.[20] Presidential candidates win by obtaining a majority of the electoral vote, not by winning in a majority of the states. Chapter 96 is even more burdensome, and, if anything, less rational than the Illinois statute in *Moore*. The states obviously are not equal in their electoral vote, but they are treated equally (and irrationally) by Chapter 96, just as the Illinois' statute in *Moore* treated the state's counties equally for purposes of nominating petitions. New York and California are considered no differently than Nevada and Alaska[21] under Chapter 96's presidential-candidate licensing system.[22]

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[20] The electoral votes of the 20 smallest states do not constitute a majority of the electoral college, Findings I, 52, p. 25; App. II-26.

[21] New York and California together have more electoral votes than the twenty smallest states combined, Findings I, 50, p. 24, App. II-26, and twice as many voters as the 20 smallest states combined, *id.* I, 49, p. 24; App. II-26.

[22] The 20-state requirement also discriminates against "favorite son" candidates, especially governors, who begin with a narrow regional candidacy, but attempt to expand it as the nomination nears. Such candidacies will die aborning under Chapter 96. See Adamany and Agree, *supra*, at 149.

Chapter 96 is, moreover, analogous to the filing-fee requirement stricken down in *Bullock* v. *Carter*, 405 U.S. 134 (1972), and *Lubin* v. *Panish*, *supra*. As succinctly summarized by one commentator, the vice of matching-grant formulae is that they "rely on a wealth criterion in order to determine eligibility." Fleishman, "The FECA of 1971," *supra*, at 405. Moreover, wealth is the *only* criterion by which matching grant funds can be obtained—*no* other alternative is available. Eligibility should be based on popular support, not wealth, if Chapter 96 is to be even minimally consistent with the rest of the challenged legislation.[23]

The formula is almost openly designed to increase the power of "special interests" and the wealthy. For example, a candidate supported by organizations having affiliates nation-wide would clearly be in a better position to garner the necessary private funds than would be a candidate without such ties. The matching grant device also gives wealthy people a considerable advantage,[24] and is clearly discriminatory, *Harper* v. *Virginia Board of Elections*, 383 U.S. 663 (1966); *Bullock* v. *Carter*, 405 U.S. 134 (1972). A wealthy couple can contribute $500 and deduct $200 from

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[23] In Georgia Socialist Workers Party v. Fortson, 315 F. Supp. 1035, 1041 (N.D.Ga. 1970) *aff'd on other grounds sub nom.* Jenness v. Fortson, *supra*, the trial court said: "[w]hile . . . it may be true that serious candidates traditionally attract money for their candidacy, we cannot say as a matter of law that one's candidacy is not serious or that he does not have the right to run merely because he does not have or has thus far failed to attract a certain amount of money."

[24] The ABA Special Committee on Election Reform states that ". . . any system of eligibility and distribution should attempt to minimize the importance of private contributions in attracting public funds." ABA Report at 6. Chapter 96 does precisely the opposite. One contributor of $250 in effect commands matching funds "checked off" by up to 250 other citizens. The contributor's voice is thus magnified, while the taxpayers are rendered mute by I.R.C. § 6096.

income on a joint return because of tax credit provisions, I.R.C. § 218. If they are in the 70 percent bracket, their income-tax liability would be reduced by $140. The government then adds $500, so the effect is a contribution of $1,000 at a cost of only $360. Chapter 96 thus permits the wealthy and the "special interests" to continue to give substantial amounts but at a lower cost to them than under the present system of private financing. See Note, Developments, *supra*, at 1269-70. No amount of drumbeating about eliminating corruption can constitutionally justify this kind of provision.

Although one reason for sustaining federal subsidies was said to be the need to save candidates' time and energy by reducing the need to raise funds (op. at 1513), the complex requirements of Chapter 96 create exactly the opposite result. Because contributions needed to qualify for federal matching-grants are small (under $250), it is difficult if not impossible for a "late" entrant to accumulate a sufficient amount of such contributions in a short period of time. Particularly since contributions are often difficult to raise without an announced and active candidate, would-be presidential nominees have entered the race and begun active electioneering and fund raising well before the traditional starting dates. Otherwise, their direct-mail fund-raising efforts (which involve a long and costly process before finally resulting in a "profit") would have almost no chance of success.

Chapter 96 deprives voters of rights as well as candidates. To the extent that a candidate's message is muted because of the discriminatory allocation of public funding, that necessarily deprives voters of information they might otherwise receive in a free market place of political ideas. *Lubin* v. *Panish*, *supra*, at 716. Fleishman, "The 1974 FECA Amendments," *supra*, at 889. Particularly when such alternatives as the voucher system are available as less intrusive means, there is no reason to resort to the crazy-quilt structure of Chapter 96.

D. *The Formula for Federal Funding of Conventions Violates the First and Fifth Amendments.*

Section 9008, I.R.C., providing for funding of nominating conventions, is unconstitutional for the same reasons that the prior-vote criterion for the funding of general-election presidential candidates is unconstitutional, see *supra*, pp. 152-54. Major parties receive equal amounts; minor parties lesser proportional amounts. New parties such as appellant Libertarian Party and independents such as appellant McCarthy receive no federal funds at all, not even a post-election subsidy based on performance.

The courts below were barely concerned with this discrimination (op. at 1565). Moreover, political conventions have considerable responsibilities quite apart from nominating a presidential ticket. As party governing bodies, they resolve philosophical disputes and chart the party's future course by writing party platforms and dealing with credentials disputes. All of these are legitimate and crucially important functions, *cf. Cousins* v. *Wigoda*, *supra*. Yet new parties and older third parties receiving less than 5 percent of the popular vote receive nothing to help defray their expenses.

How a court that can complain about "quadrennial Romanesque political extravagances" can then uphold blatantly discriminatory federal financing of major party conventions (which are often mainly exercises in political publicity, particularly when the renomination of an incumbent President is involved) is unclear. What is clear is that federal subsidies will help widen the gap between major parties and all other political groups. *American Party of Texas* v. *White*, *supra*, invoked by the court below (op. at 1565), can in no way support such an infringement of First Amendment rights.

VII.

The FECA Disclosure Requirements for Contributions to Candidates for Federal Office Are Unconstitutionally Overbroad.

Political committees, as defined by the FECA, must keep detailed records (subject to audit by the FEC) of all individuals contributing more than $10 to those committees. 2 U.S.C. §§ 432(b)-(d) and 438(a)-(d). Political committees and candidates are further required to file periodic reports disclosing the name, occupation, and principal place of business of all those contributing in excess of $100. *Id.*, § 434(b) (1)-(8). Every person who contributes or expends more than $100 other than by contribution to a political committee or candidate (including volunteers with incidental expenses exceeding $600) must also disclose his contributions to the FEC. *Id.*, § 434(e). Certain resources available to incumbent office holders, enumerated in *id.*, § 434(d), need not, however, be disclosed. Criminal penalties are provided for violations of the foregoing. *Id.*, § 441.

These disclosure requirements are unconstitutional not because any such requirements would be *per se* unconstitutional, but rather because they indiscriminately intrude upon associational privacy interests in a manner that is not limited to securing only those governmental interests which are served by disclosure. More particularly, the statutes here are unconstitutional in the scope of their application to minor-party and independent candidates because in such situations the valid governmental purposes served by disclosure are attenuated while the harm to associational interests is severe. Similarly, they are overbroad because the threshold amounts of $10 and $100 that trigger the record-keeping and reporting requirements, respectively, are excessively low, reaching well beneath the

level at which the governmental interests outweigh the claims of associational privacy.

Appellants recognize that disclosure requirements differ in two respects from expenditure and contribution limitations. First, properly drawn disclosure requirements do not involve the same direct restrictions on political activity or speech. Second, disclosure of certain contributions and expenditures can advance other constitutional values by providing voters with information relevant to their choice of candidates. Indeed, appellants believe that narrowly drawn disclosure requirements are the proper solution to virtually all the evils Congress sought to remedy by passing the challenged statutes. However, this Court must determine whether the challenged statutes are the means least destructive of associational interests and precisely related to achieving governmental interests. *Aptheker* v. *Secretary of State, supra; New York Times* v. *Sullivan, supra; Sherbert* v. *Verner, supra.*

A. *The Act's Disclosure Requirements Intrude Upon First Amendment Rights of Associational Privacy.*

It is well settled that the constitutional protection of associational privacy is not limited to advocacy which takes the form of litigation or public education, *e.g.*, *NAACP* v. *Alabama, supra,* but fully protects those whose association is for the purpose of political and electoral activity and advocacy. *Kusper* v. *Pontikes,* 414 U.S. 51 (1973); *American Party of Texas* v. *White,* 415 U.S. 767 (1974). As the Court observed in *Kusper:*

> "There can no longer be any doubt that freedom to associate with others for the common advancement of political beliefs and ideas is a form of 'orderly group activity' protected by the First and Fourteenth Amendments. . . . The right to associate with the political party of one's choice is an

> integral part of this basic constitutional freedom." 414 U.S. at 56-57 [citations omitted].

Moreover, those associational rights are afforded the same protection against indirect restraints as they are against direct and heavy-handed intrusions. *NAACP* v. *Alabama, supra,* 357 U.S. at 461; *Kusper* v. *Pontikes, supra.* Accordingly, statutes which inhibit, even indirectly, the right to associate for the advancement of political purposes can be justified only if designed to achieve compelling governmental interests that can be furthered in no less intrusive a manner. *Kusper* v. *Pontikes,* 414 U.S. at 56-60; *American Party of Texas* v. *White,* 415 U.S. at 780-81.

That the disclosure of political affiliations which are manifested through political contributions can have a deep and intrusive inhibiting effect on such association is not only manifested by the record, but made plain by common experience.

While disclosure requirements may serve to buffer the dangers of corruption of governmental officials, they can also have a significant negative effect on contributions to political candidates, parties, and committees. This occurs because some potential contributors do not want their names disclosed, any more than most individuals would want their election-day ballot choices disclosed.

Substantial reasons exist to justify such fears. The celebrated "enemies list" was compiled in part from lists of contributors to Democratic presidential contenders. *Hearings on Watergate and Related Activities Before the Select Committee on Presidential Campaign Activities,* U.S. Senate, 93rd Cong., 1st Sess., Book 4, 1732-35 (1973). Other disclosure requirements have typically been directed at the members of unpopular groups or the adherents of unpopular causes: suspected Communists in the 1950's, proponents of integration in the 1960's, and members of

the anti-Vietnam-war movement in the late 1960's and early 1970's.[1]

There are considerable fears of private retribution as well. Disclosure of contributions could damage employment and business relationships. A public-school teacher in Alabama may oppose George Wallace but fear to support his opponent because school board members committed to Wallace will find out. A teacher in New York may support Wallace and fear to contribute to his campaign because the parents of his students may call him a bigot.

To be sure, the record here does not reflect the kind of focused and insistent harassment of contributors and members that existed in the *NAACP* cases.[2] But the record does show the clearly articulated fears of individuals, well experienced in the political process, who have stated that the systematic disclosure of political contributions required by the statute would lessen the amounts of contributions received by their political organizations. See, *e.g.*, Reed dep. tr. 50, 66-69; Reed aff. ¶¶ 29-32; McCarthy dep. tr. 17-18, 67-70, 106-07; Weil dep. tr. 27-28; Crane aff. ¶ 11G; Crane dep. tr. 38.

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[1] Recent revelations indicate that the Internal Revenue Service, under both Democratic and Republican administrations, gave special attention to the tax returns and contributors to tax-exempt groups on the right and on the left. And it has also been recently disclosed that agencies of the government maintain a computer network, with the disarming acronym "IMP," with information on the political activities millions of Americans, much of it gathered from lists of campaign contributions. In light of these practices, a potential contributor to a dissident political party will surely get the message from the flyer which rehearses the statutory legend: "A copy of our report is filed with the Federal Election Commission . . . ." 2 U.S.C. § 435.

[2] NAACP v. Alabama, 357 U.S. 449 (1958); Bates v. Little Rock, 361 U.S. 516 (1960); Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539 (1963).

The Mississippi Republican Party, for instance, is fearful of disclosure because of those party members who do not want their political contributions publicly known. Findings III, Reed 8, p. 49; App. II-740. The Party relies heavily on contributions in excess of $100 to finance its operations. Approximately two-thirds of the funds used to finance such operations come from contributors of $10 per month, made on a bank-draft system, *id.*, Reed 7, p. 49; App. II-740. The long-time dominance of the Democratic Party in that state made it hazardous for individuals to be publicly known as supporters of the Republican Party. These $120-per-year contributors and many others could remain anonymous under the Mississippi disclosure statute, which requires reporting only of contributions in excess of $500, Miss. Code Ann. § 23-3-41 (1972), and avoid possible harassment based on their association. Under the FECA, these contributors are not longer protected.

There is uncontradicted testimony by Sen. Buckley's 1970 Finance Chairman that contributions to that campaign were a very sensitive matter to many individuals in New York, Weil dep. tr. 28, when the candidate was the nominee of only the Conservative Party.

There is further uncontradicted testimony from Mr. Weil that many persons with Republican affiliations were reluctant to contribute to a third-party candidacy if that fact would be publicly known. At that time the option was open to such individuals to contribute through " Washington committees." Those committees were not subject to the federal or New York reporting and disclosure requirements, *id.* Under the FECA, that option is no longer open to them, and Conservative Party candidates will not be able to receive contributions without disclosing the donors' names. Sen. Long, a supporter of the challenged legislation, explicitly stated that "[t]he disclosure provisions really have in fact made it difficult for challengers to challenge incumbents." 120 *Cong. Rec.* S 18544 (daily ed. October 8, 1974).

And thus, as Sen. Long implied, contributions which otherwise would have been made are simply not made. It would be the rare contributor indeed who informed a party official that he did not intend to contribute because of fear of disclosure. Instead, the would-be contributor simply would remain silent, neither contributing nor explaining why he did not intend to do so, but seeking to avoid potential harassment. The fact, therefore, that there is little evidence of harassment or reprisals should not be surprising. Rosenthal, "Campaign Financing," *supra*, at 406-07. The chilling of political activity, though not easily measurable, is nonetheless real. Nothing else explains the large number of $99 contributions received by the Mississippi Republican Party. Reed aff. ¶ 11; Reed dep. tr. 31-32. See 120 *Cong. Rec.* S 4570 (daily ed. March 27, 1974). It would be ironic if one result of campaign reform were to discourage citizen involvement in politics.[3] See H. Rep. No. 93-1239, *supra*, at 120.

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[3] The result in Pichler v. Jennings, 347 F. Supp. 1061 (S.D.N.Y. 1972), has been strongly criticized precisely because the court there "sought to avoid the conceptual problem of defining minor party status by converting the issue into a question of fact: could the plaintiffs show that participants in, or contributors to the Conservative Party had been subject to 'reprisals' in the past?" Note, Developments in the Law—Elections, *supra*, at 1248. The authors continue:

> "That approach is tenuous. First, proof of reprisal is a difficult matter, as the sanctions are often subtle. Second, if disclosure truly deters, contributors fearful of reprisal will not place themselves in a position to suffer. Last, even if deterrence is not complete, there may be great injury to the organization before the *[Pichler]* test can be met." *Id.* at 1248-49.

The same Note also criticized the decision in Stoner v. Fortson, 379 F. Supp. 704 (N.D. Ga. 1974), for its insensitivity to the "especially severe burdens imposed, and the diminished importance of state interests, when disclosure is required of unpopular candidates and parties," *id.* at 1250. Indeed, the major effect on a new party might be a failure to grow, an effect impossible to prove yet very real.

The court in *Pollard* v. *Roberts*, 283 F. Supp. 248 (E.D. Ark. 1968), *aff'd per curiam*, 393 U.S. 14 (1968), clearly understood this phenomenon. There a local prosecutor investigating alleged election-law violations sought access to the Arkansas Republican Party's bank account, the effect of which would be to reveal individual contributors to the Party. Enforcement of a subpoena was enjoined as a violation of associational privacy:

> "While there is no evidence of record in this case that any individuals have as yet been subjected to reprisals on account of the contributions in question, *it would be naive not to recognize that the disclosure of the identities of contributors to campaign funds would subject at least some of them to potential economic or political reprisals of greater or lesser severity.*
>
> "Apart from fear of actual reprisal, many people doubtless would prefer not to have their political party affiliations and their campaign contributions disclosed publicly or subjected to the possibility of disclosure merely because an officer or agency clothed with investigatory powers may suspect that some members of their party may have violated the law. Disclosure or threat of disclosure well may tend to discourage both membership and contributions thus producing financial and political injury to the party affected." 283 F. Supp. at 258 (emphasis added).[4]

Recognizing these phenomena, this Court has not required the right of associational privacy to turn solely upon a detailed showing that a certain minimum number of

[4] Although the court in *Pollard* acknowledged the merit of general political-committee disclosure requirements, its holding was premised upon a recognition that a particular application of disclosure may so intrude on associational interests as to be unconstitutional.

people are harassed, lose their jobs, receive threats or suffer acts of violence. Its protection arises instead from the judicial recognition that the prospect of public identification with groups engaged in advocacy will deter individuals from such association. That is why this Court has characterized it as "hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy" may constitute an effective restraint on freedom of association and has "recognized the vital relationship between freedom to associate and privacy in one's associations . . . ." *NAACP* v. *Alabama*, 357 U.S. 449, 462 (1958). Indeed, in numerous cases, that right has been protected on the basis of that assumption alone and in the absence of a detailed showing of harassment. *United States* v. *Rumely*, 345 U.S. 41 (1953); *Lamont* v. *Postmaster General*, 381 U.S. 301 (1965); *Pollard* v. *Roberts*, *supra*; see also *ACLU* v. *Jennings*, 366 F. Supp. 1041 (D.D.C. 1973), *vacated as moot sub nom. Staats* v. *ACLU*, 43 U.S.L.W. 5043 (1975). The proper rule was stated by Chief Judge Bazelon, dissenting below: "The Court has never varied the rigor of its scrutiny depending on the presence or absence of a record of harassment and chill. Rather, whenever a disclosure requirement—or any other law—has posed a reasonable danger of chilling the exercise of First Amendment rights, the Court has applied its most exacting review" (op. at 1596) (footnotes omitted). As we will now show, the majority below failed to apply such scrutiny.

B. *Application of The Act's General Disclosure Requirements to Minor-Party and Independent Candidates Serves No Compelling Governmental Interest Sufficient To Override the Associational Rights at Stake.*

The disclosure requirements cause particular difficulty to new and minor parties and independent candidates.[5] Organizations such as the Libertarian Party and the Committee for a Constitutional Presidency—McCarthy '76 are often viewed as "fringe" groups. Individuals who share their views might wish to contribute to them, but would be reluctant to do so if their contributions were made public. Contributing to a new party or an independent candidate is considerably different from contributing to an established party in most instances. See, *e.g.*, Crane aff. §§ 11E, 11G; Wertheimer aff. §22. Minor parties tend to take more well-defined positions and to adhere to them more strongly than do major parties. Sorauf, *Political Parties in the American System* 33-34 (1964). Indeed, a recognized function of minor parties is to create a climate of opinion in which major parties will adopt their stands on issues, not necessarily to elect their candidates to office, *Sweezy* v. *New Hampshire*, *supra*, at 251.

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[5] One law-review comment has observed:

> "Yet, because minor parties often advance unpopular political positions, and because their candidates usually have no expectations of victory, their contributors may feel more endangered by disclosure requirements than would supporters of the major parties. To the extent that effective advocacy of a political position in contemporary public life requires organizing a political group and collecting large amounts of money, this burden may stifle an unpopular point of view permanently. While the primary impact of disclosure statutes on the major parties may be to reduce the volume of their speech, the impact on minor parties could be to eliminate them entirely." Note, Developments in the Law—Elections, *supra*, at 1247.

In the often-quoted words of Chief Justice Warren: "History has amply proved the virtue of political activity by minority, dissident groups who innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted." *Id.* at 251.

The majority below recognized that disclosure might work some harm on unpopular minor parties, and "does indeed infringe their First Amendment freedom to associate to advocate unorthodoxy," but concluded on balance that such rights were subject to "reasonable restrictions for reasons of compelling state interest . . . " (op. at 1548). That conclusion cannot be sustained.

Although this Court has not addressed or analyzed associational-privacy claims in the context of campaign-finance disclosure laws, it has recognized such claims in a variety of other situations.[6] This Court has also made it clear that the constitutional guarantee of associational privacy fully protects those whose association is for the purpose of electoral activity, *Kusper* v. *Pontikes*, 414 U.S. 51 (1973); *American Party of Texas* v. *White*, 415 U.S. 767

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[6] The right of associational privacy has been upheld as overriding claimed governmental interests in probing subversive activities within a state, Sweezy v. New Hampshire, 354 U.S. 234, 255 (1957) (concurring opinion); in regulating corporations doing business in the state, *e.g.*, NAACP v. Alabama, 357 U.S. 449 (1958); in preventing false or fraudulent political or other advertising by requiring that handbills identify their individual sponsors, Talley v. California, 362 U.S. 60 (1960); in scrutinizing the fitness of teachers, Shelton v. Tucker, 364 U.S. 479 (1960); in probing possible subversive influence in race relations, Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539 (1963); in regulating foreign travel for espionage purposes, Aptheker v. Secretary of State, *supra;* in screening Communist political propaganda from abroad, Lamont v. Postmaster General, 381 U.S. 301 (1965); in protecting defense industries, United States v. Robel, 389 U.S. 258 (1967); and in assessing the character and fitness of applicants for admission to the bar, *e.g.*, Baird v. Arizona, 401 U.S. 1 (1971); In re Stolar, 401 U.S. 23 (1971).

(1974); *accord, Pollard* v. *Roberts, supra.* Accordingly, any inhibition of such association can be justified only by reference to the compelling-interest analysis identified in the associational-privacy cases.

That is why the two decisions of this Court relied on by the court below do not support the constitutionality of the FECA disclosure provisions. Although the decision in *Burroughs* v. *United States,* 290 U.S. 534 (1934), upheld the disclosure provisions of the Federal Corrupt Practices Act of 1925, that decision only established that Congress has authority under Article I of the Constitution to enact such legislation. No First Amendment issues were raised or decided in that case. Moreover, the deference concerning means to achieve goals accorded to legislative choices in that case, *id.*, at 547-48, is no longer the law when First Amendment rights are at stake, *Shelton* v. *Tucker, supra; Aptheker* v. *Secretary of State, supra; United States* v. *Robel,* 389 U.S. at 258 (1967).

Similarly, although *United States* v. *Harriss,* 347 U.S. 612 (1954), involved no direct associational-privacy claims, the Court nevertheless gave an extremely narrow reading to the federal lobbying statute, confining its reach to those persons or contributions the main purpose of which was to engage in core lobbying efforts through direct representations to members of Congress. *Harriss* and its approving citation of *Burroughs* do not sustain the sweep of the disclosure provisions here. And the holding of *Harriss* must be read together with *United States* v. *Rumely, supra,* where the Court rejected a congressional attempt "to inquire into all efforts of private individuals to influence public opinion through books and periodicals, however remote the radiations of influence which they may exert upon the ultimate legislative process . . . ." 345 U.S. at 46. The distinction between *Harriss'* recognition of power to regulate through disclosure those who bring direct pressures to bear at the core of the legislative process and *Rumely's* denial of power

to regulate those remote radiations of influence is highly relevant, for it suggests the distinction between disclosure of the funding of those major-party candidates with present access to governmental power and disclosure in the context of new, unorthodox, minor-party or independent candidacies whose present access to governmental power is normally remote.[7]

The court below saw three interests served by sweeping independent and minor-party candidates within the FECA's general disclosure requirements.

First, the Court thought that disclosure of the identity of those "angels" who occasionally support minor-party candidates would help ensure enforcement of the contribution limitations and other prohibitions in the FECA. However, there is virtually no showing in the record of such

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[7] The decision in United States v. Finance Committee to Re-Elect the President, 507 F.2d 1194 (D.C. Cir. 1974), relied on below, does not preclude this Court's consideration of the over-breadth challenge here. There, the conviction of the Committee for failing to report the $200,000 cash contribution from Robert Vesco was upheld against a claim that the 1971 Act's disclosure requirements infringed First Amendment freedoms. Since the conduct involved there—a $200,000 cash contribution to an incumbent President's re-election campaign—is the paradigm case for disclosure, it was hardly an appropriate occasion to employ the overbreadth doctrine to overturn the conviction on the basis of the Act's improper reach. See, *e.g.*, Broadrick v. Oklahoma, 413 U.S. 601 (1973). Second, there was no attempt to make a factual showing of harm, because the issue was not even raised in the District Court, rendering "the barren record . . . not an appropriate medium" for a challenge to a statute whose general validity had been upheld forty years earlier in *Burroughs.* In this case, however, in a factual context and involving parties far from the core of any valid legislative purpose requiring disclosure, careful scrutiny of the reach and imprecision of the disclosure provisions is most appropriate.

Similarly inapposite is Stoner v. Fortson, 379 F. Supp. 704 (N.D. Ga. 1974) (three-judge court), where the challenge to a similar state disclosure statute was made by a candidate in a major-party primary.

violations sufficient to warrant inclusion of all minor-party and independent candidates within the FECA's sweep. Conversely, the record does show, as the dissent noted, that minor parties generally receive little money and have few large contributors.[8]

Second, the Court found persuasive the public's interest in knowing "the composition of the angel's wings and what makes them fly," so that "voters are not required to vote blind" (op. at 1545). However, there is no indication in the record that members of the public or of the news media are significantly interested in contribution information about minor-party candidates. In addition, since the views and programs of minor parties tend to be well established and well known, there is a diminished public need to know the identity of the supporters of such a party for purposes of evaluating their programs, platforms, or candidates. But most importantly, since the "radiations of influence" which minor parties generally exert upon the electoral process are "remote," *cf. United States* v. *Rumely, supra,* 345 U.S. at 146, the compelling interest in identifying the sponsors of such activity is remote as well. Indeed, the electoral activities of minor-party and independent candidates are much more directed at influencing public opinion than at achieving electoral power. To that extent, those activities are much more similar to the functions of independent "issue"

[8] Only 6 percent of the contributions to minor parties are in amounts over $1,000. Findings II, A 56, 73, pp. 103, 110-11; App. II-453,457. Spending by minor-party and independent candidates for federal office normally constitutes approximately 2 percent of all federal political spending. See, *e.g.*, Findings II, A 13, p. 89; App. II-441. To be sure, minor-party and independent candidates sometimes are successful, and may be so in the future if the blatant discriminations against them in many sections of the challenged statutes are held unconstitutional. That possibility could easily be handled by requiring post-election disclosure by any minor-party or independent candidate who managed to win office; that would be sufficient to prevent undue influence by large contributors on elected officials.

organizations which the court below afforded constitutional protection by invalidating Section 437a. If the public interest in learning the identity of contributors to issue organizations, in order better to evaluate their positions, is insufficient to overcome the First Amendment rights of such organizations and their contributors, then the same should be true of minor-party and independent candidates as well.

Third, though recognizing that any connection between preventing official corruption and disclosure of minor-party contributions was less substantial, the court below thought that since it was not impossible that such candidates might win office, the rationale had some force. But, obviously, any potential for corruption exists only where those who hold governmental power can exercise favoritism. Libertarian Party candidates have never been in a position to raise milk price supports to advantage special-interest contributors. The Conservative Party of New York has never nominated an ambassador to reward a large contributor. The Committee for a Constitutional Presidency—McCarthy '76 has never controlled the awarding of governmental contracts. The corruption-prevention rationale is totally irrelevant to minor parties and their candidates, committees and supporters.

Finally, common to all three interests was the Court of Appeals' concern that disclosure of contributors to minor parties was necessary to prevent the "stalking horse" role, whereby a minor party is created or funded by one of the two major parties. But there is not a bit of evidence in the record to show that the stalking-horse problem is real or substantial, or that the conspiracy required to effectuate such a strategy could easily form, or that the Congress was even concerned with such a problem. In any event, disclosure of the expenditures of major-party candidates or committees is an effective deterrent. The extremely remote possibility of this problem is a grossly inadequate basis to

justify the very real harm that wholesale disclosure may impose on minor-party or independent candidates.

These various interests cannot sustain the indiscriminate sweep of the FECA's disclosure provisions. "Sometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike." *Jenness* v. *Fortson*, 403 U.S. 431, 441-42 (1971). The same statute which treats candidates and parties with sharp and unconstitutional distinctions when it comes to disbursing benefits in the form of public financing makes no such distinctions in imposing the burdens on associational rights of reporting and disclosure requirements. Nor, similarly, can it be contended that securing the general interests in disclosure cannot be achieved by less drastic means. In addition to the distinctions employed in the public financing provisions, Congress could have defined as minor parties, and spared from disclosure, those not qualifying for automatic ballot access under state law, thus incorporating the lower thresholds employed by the states. See Note, Developments in the Law—Elections, 88 Harv. L. Rev. 1111, 1124 n.11 (1975). Instead, as with the Communist Party membership cases, Congress indiscriminately cast the net of disclosure "across a broad range of associational activities," *United States* v. *Robel, supra*, 389 U.S. at 265-66, without regard to the widely varying interests at stake. See also *Aptheker* v. *Secretary of State*, 378 U.S. 500 (1964). As in those cases, the disclosure provisions here are defectively overbroad and improperly applied to the appellants.

C. *The Disclosure Thresholds Lack a Substantial Nexus with the Claimed Governmental Interests Advanced.*

The first major federal legislation requiring disclosure of contributions to political candidates or committees, passed in 1910, 36 Stat. 822, required disclosure of certain contributions to candidates of $100 or more. Under the FECA, contributions in excess of $100 are required to be

reported. The triggering threshold for automatic reporting of contributors is only one penny higher than that first enacted in 1910.

Neither the 1910 legislation, nor the Federal Corrupt Practices Act of 1925, nor the FECA of 1971 has any legislative history revealing the rationale for the $100 triggering threshold. The Consumer Price Index rose 397 percent between 1913 (the first year in which statistics are available) and 1974.[9] Even without considering the increase in the cost of political campaigns since 1910, a present figure comparable to the 1910 threshold would have to be at least $397. The $100 figure has no greater rationality than that it is a round number. Requiring detailed record-keeping of all contributions in excess of $10, subject to government inspection, is even more difficult to justify.[10] It constitutes a monitoring of virtually all political contributions to federal candidates. To suggest that such record-keeping advances any countervailing interest in preventing corruption is ludicrous.[11]

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[9] Calculated from the Consumer Price Index (U.S. City Average, All Items, Series A) prepared by the Department of Labor, Bureau of Labor Statistics.

[10] The ACLU has noted this difficulty and stated that "[s]mall contributions which cannot purchase corruption should not be disclosed . . . . It is ridiculous to suggest that contributions of this [$10 and $100] size have a corrupting influence on presidential campaigns or even on congressional campaigns. But while the disclosure of such contributions is irrelevant to corruption it seriously intrudes on privacy since it provides a ready-made list for employers to check on the political activities of their employees." ACLU Report at 14.

[11] One of the supervisory officers charged with enforcing the 1971 Act, the Secretary of the Senate, suggested that eliminating record-keeping of all transactions of less than $100 would be a sensible change endangering no valid governmental interests. Hearings Before the Sub-Committee on Privileges and Elections and the Senate Committee on Rules and Administration, S. 23, *et al.*, 93d Cong., 1st Sess. 63-64.

(continued)

The FECA Amendments were enacted, moreover, before one full election cycle had taken place after the effective date (April 7, 1972) of the 1971 FECA. The 1974 Act made only minor changes in the 1971 Act's provisions relating to disclosure (*e.g.*, the disclosure threshold was raised from $100 to $100.01, 2 U.S.C. § 434(b)). There was thus no opportunity to evaluate the full impact of the existing disclosure requirements, with regard to modifying them or with regard to any need for more drastic legislation.

Although *Burroughs* v. *United States* upheld the predecessor disclosure statute and was cited with approval in *United States* v. *Harriss*, the associational-privacy cases decided since then require much closer scrutiny of whether the present disclosure requirements directly and precisely serve the interests claimed for them than was afforded below.[12]

The court below, relying on the perceived absence of a showing of harm from disclosure in the record, felt that there was no need to re-examine *Burroughs* and *Harriss* in that fashion and that the interests served by disclosure were generally compelling.

It is conceded that there are a variety of circumstances where disclosure of the identity of contributors serves com-

[11] (continued)

The court below ruled that the challenge to the $10 record-keeping requirements and the audit provision was "unripe" since there was no indication that the FEC would automatically disclose the identity of any such small contributors learned during an audit. Based on the lack of a provision authorizing public disclosure of such records by the FEC, the court simply assumed they had a confidential status.

[12] The lobbying statute in *Harriss* required disclosure only of those contributors of more than $500 per year, a threshold significantly higher than the threshold here. In 1954, $500 could be far more "influential" than $101 (or $500) could ever hope to be today.

pelling governmental interests. But even when the governmental interest is deemed compelling, the nexus between disclosure and the governmental interest advanced, and the precision with which the particular disclosure requirements promote these interests, are as important as the degree of harm which would result from disclosure.[13] Absolutely no such connection appears anywhere in the legislative history, or in any of the evidence in this case. There is no evidence that any federal officials or candidates for federal office have been corrupted by amounts in the range of $100.[14] Nor can there be; common sense dictates that even the most

[13] See, *e.g.*, Gibson v. Florida Legislative Investigations Comm'n, 372 U.S. 539 (1963); Shelton v. Tucker, 364 U.S. 479 (1960); Bates v. Little Rock, 361 U.S. 516 (1960).

Surely, for example, invalidating a statute requiring disclosure of organizational affiliations by each person writing a partisan letter to the editor or a guest editorial, or a statute requiring voters to disclose how he or she voted, would not turn on a showing that such disclosure would cause a given number of people to lose their jobs. Such statutes would be infirm, among other reasons, because of the lack of any connection between a governmental interest and such disclosure sufficient to warrant burdening such fundamental First Amendment activities. They would also be invalid because such information is presumed to be none of the government's business.

So too for the right to associate with, contribute to and support political causes and candidates whose views one shares, unless the required disclosure is precisely tailored to those circumstances and amounts involving the possibility of corruption. Writing a check to a candidate is a very fundamental political act. One-third of those surveyed in an opinion poll had contributed financially to a political campaign. Other studies show that, next to actually voting, making a political contribution ranks with wearing a political button or displaying a political sticker as a common form of political activity. Findings I, 107, p.97; App. II-147.

[14] Indeed, the Common Cause information on contributors to the Finance Committee to Re-Elect the President does not even contain a category for contributors of less than $5,000. Findings II, A 119, pp. 157-81; App. II 508-64.

corrupt Members of Congress will not be "bought" for so small an amount.[15] Sen. Humphrey, a supporter of the challenged legislation, made precisely that point, 120 *Cong. Rec.*, S 5540 (daily ed. April 9, 1974).

The *NAACP* cases show that the substantial-connection element requires not merely a general connection between the governmental interest (preventing corruption) and the means employed to achieve that interest (disclosure of contributions), but rather a specific relationship between the achievement of the general interest and the particular disclosure requirement. See, *e.g.*, *Bates* v. *Little Rock*, *supra*, at 524-25. Thus, the substantial-nexus test is not whether disclosure is generally valid, but whether it is specifically necessary. Here, for the reasons set forth above, application of the requirements to many of these appellants and other minor parties like them does not meet the substantial-connection test.

The court below found disclosure necessary to prevent the secrecy "so essential to the appearance and reality of influence dealing" (op. at 1547). Disclosure of some contributions will have these salutary effects, but the challenged statutes reach well beyond that.

The $10 and $100 thresholds apply to all elections for federal office. In a clear example of legislative failure to evaluate with precision the means necessary to attain the goal of removing corruption from the electoral process, Congress made no effort to calibrate the disclosure threshold requirements with respect to different federal offices,

[15] The ABA Special Committee on Election Reform endorsed disclosure, but it did *not* endorse the FECA's triggering thresholds. Indeed, its Report explicitly stated that ". . . disclosure should be required of those amounts which could tend to improperly influence office holders and policy." ABA Report at 5. As the text indicates, no one could argue that $10 or $100 are amounts that could tend to influence improperly candidates for federal office.

as it did with expenditure limits, see 18 U.S.C. § 608. That there was no similar effort to arrive at different disclosure thresholds indicates that Congress did not seriously consider either the impact or the intent of the $100 threshold and clearly did not employ the least drastic means to attain its goals. In *Shelton* v. *Tucker*, *supra*, this Court held:

> ". . . even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgement must be viewed in the light of less drastic means for achieving the same basic purpose." 364 U.S. at 488.

See also *Kusper* v. *Pontikes*, *supra*, at 56-60; *American Party of Texas* v. *White*, *supra*, at 780-81. These standards require closer scrutiny than the "reasonable latitude as to where to draw the line" which the court below afforded to Congress.

A more carefully drafted system of disclosure, fixing the disclosure thresholds at levels which truly protect the integrity of the electoral process, would be constitutionally permissible. The FECA, however, has not attempted to draw such lines with precision.

D. *Requiring Disclosure by Individuals Who Make Independent Expenditures Unconstitutionally Chills Freedom of Speech.*

Every person (other than a political committee or candidate) who makes contributions or expenditures other than by contribution to a political committee or candidate in excess of $100 per calendar year must file with the FEC a statement giving his full name, address, occupation and principal place of business, and periodic reports giving the same information required in reports by political com-

mittees. That includes identifying each person to whom an expenditure is made, the amount, date and purpose of each such expenditure, and an allocation of expenditures among candidates if more than one was involved. 2 U.S.C. §§ 434(b)(9), 434(e).

The requirement is the same as that imposed on political committees, but with one vital difference. Section 434(e) requires individual citizens to report political activity costing more than $100 directly to the FEC, upon pain of criminal penalties if they fail to do so. *Id.*, § 441.[16]

In a one-paragraph discussion of this section, the Court of Appeals said only that, if the limit on independent expenditures is constitutional, so too is a requirement that such expenditures be disclosed (op. at 1549). The court below did not even mention, let alone distinguish, the one case that is squarely on point, and squarely contradictory to Section 434(e)—*Talley* v. *California*, 362 U.S. 60 (1960).

Here, as in *Talley*, the challenged statute clearly encompasses the distribution of handbills and leaflets dealing with political subjects. Here, as in *Talley*, the statute is not limited to "... providing a way to identify those responsible for fraud, false advertising and libel." 362 U.S. at 64. Here, as in *Talley*, "[t]here can be no doubt that such an identification requirement would tend to restrict freedom to distribute information and thereby freedom of expression," *id.*

In several respects, Section 434(e) is actually more burdensome and chilling than the municipal ordinance stricken down in *Talley*. There, the only requirement was that handbills and leaflets had to contain on their face cer-

[16] It appears from the statute and the FEC's forms that, once the reporting requirement has been triggered by the making of one expenditure in excess of $100, *all* expenditures by that individual must be reported whether in excess of $100 or not.

tain information, 362 U.S. at 60-61. Section 434(e), however, affirmatively requires individual citizens to report their expenditures directly to a governmental agency. Immense chilling effects are created by requiring persons to write to the FEC and inform it of their political activities.

The *Talley* decision did not require proof of harassment or reprisals. Rather, it declared the Los Angeles ordinance void on its face, 362 U.S. at 65, because as Mr. Justice Harlan said, ". . . it will not do for the State simply to say that the circulation of all anonymous handbills must be suppressed in order to identify the distributors of those that may be of an obnoxious character." 362 U.S. at 66 (Harlan, J., concurring). *Accord, Zwickler* v. *Koota*, 290 F. Supp. 244 (E.D.N.Y. 1968), *rev'd on other grounds sub nom. Golden* v. *Zwickler*, 394 U.S. 1031 (1969).

If the important role played by handbills, leaflets, and brochures—all of which are forms of spontaneous political communication—is to be preserved, Section 434(e) must be declared unconstitutional. It is flatly inconsistent with *Talley* v. *California*, *supra*, and its effects will be even more serious than the other disclosure provisions challenged herein. If the "breathing space," *NAACP* v. *Button*, 371 U.S. 415, 433 (1963), necessary to protect the First Amendment is to be preserved, Section 434(e) must fall.

Finally, apart from the statute's direct conflict with the protection of political anonymity recognized in *Talley*, the very real, practical burdens of the reporting requirements themselves are certain to deter individuals from making expenditures for their independent political speech. Core First Amendment activities cannot be thus burdened. In *Thomas* v. *Collins*, 323 U.S. 516 (1945), a Texas statute required labor organizers simply to register with a local official in order to give a speech. This Court, though recognizing that such requirements might be justifiable where solicitations of funds or subscriptions were concerned, held to the contrary where speech alone was involved:

> "If one who solicits support for the cause of labor may be required to register as a condition to the exercise of his right to make a public speech, so may he who seeks to rally support for any social, business, religious or political cause. We think a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment." 323 U.S. at 540.

If a simple registration requirement is "quite incompatible" with the First Amendment when imposed as the precondition of making a speech, then the far more detailed and burdensome reporting requirements of Section 434(e) can surely not be sustained solely on the ground that they will help enforcement of a provision which is itself thoroughly suspect.

VIII.

The Enforcement Provisions of the Challenged Legislation Violate the Constitution.

A. *The Method of Appointment of Members of the FEC Is Unconstitutional.*

Two members of the Federal Election Commission (FEC) are appointed by the President *pro tem* of the Senate upon the recommendation of the majority and minority leaders; two are appointed by the Speaker of the House upon the recommendation of the majority and minority leaders; and two are appointed by the President. All nominees must be confirmed by both Houses. 2 U.S.C. § 437c(a).[1]

The Constitution explicitly vests the appointment power in the President:

> "[The President] shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and

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[1] Rep. Frenzel, one of the strongest supporters of the FEC, stated after the passage of the FECA Amendments that the FEC was "unique" among federal agencies because of its members' mode of appointment. 120 Cong. Rec. H 10908 (daily ed. November 20, 1974.)

Congress has, on many occasions, exercised the power of appointment. In no case, however, has it attempted to exercise this power with respect to a department, agency or board with the vast powers vested in the FEC. The Rock Creek Park Committee and the Committee to Celebrate 100 Years of Peace and Independence are of a wholly different dimension. And even these exercises of the appointment power have never been approved by judicial decision.

> which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments." Article II, Section 2.

The six FEC members are "officers of the United States." They clearly have executive and judicial functions to perform. The FEC has the power to investigate violations of the FECA, to exercise primary jurisdiction over civil enforcement, to render advisory opinions, to prescribe rules and regulations implementing the Act, to determine eligibility for public financing, and to disqualify a person from running for federal office. 2 U.S.C. §§ 437d, 437f, 437g, and 456. This enormous executive and judicial power is magnified because the provisions of the FECA are so vague and delegate so much power to the FEC. The holding below that persons wielding such power are not "officers of the United States" most seriously distorts the separation of powers embodied in the Constitution.

(1) *The Appointments Clause Is an Important and Carefully Considered Part of the Constitutional Scheme.*

The history of the appointments clause demonstrates beyond doubt that the constitutional language was deliberately chosen. At the time of the Constitutional Convention, all state constitutions save that of New York vested the appointing power in the legislature. See *The Federalist*, No. 47, Cooke ed. 1961, p. 323; Thach, *The Creation of the Presidency, 1776-1789*, 33 *et seq.* (1969). The Framers were clearly aware of this fact, for the locus of the appointment power was a matter of heated debate in the states. In 1778, for example, a proposed Massachusetts constitution failed of ratification partly because of its weak executive. Many Massachusetts towns submitted written reasons for rejecting that constitution. Among these, the important "Essex Result" emphasized that the proposed Constitution

did not fix the appointment power in the executive branch. Thach, *supra*, at 47.

At the federal level, the vesting by the Articles of Confederation of the power of appointment in Congress was a major source of dissatisfaction. For instance, "factional differences kept important offices unfilled for long periods." Thach, *supra*, at 73; op. at 1572.

At the Constitutional Convention the appointment power was highly controversial: some wanted it to remain in the legislative branch while others desired to entrust it exclusively to the executive. The ultimate resolution, in language as carefully and deliberately drafted as any in the Constitution, was a compromise: the power of appointment would be lodged in the executive, but the Senate must give its advice and consent. 2 Farrand, *Records of the Federal Convention* 535-39 (1934 ed.); 3 *id*. at 99.

This compromise was intended to exclude the legislative branch from the power to nominate officers of the United States, as both the explicit consitutional language and the statements of the Framers make clear. Hamilton wrote,

> "It will be the office of the President to *nominate*, and, with the advice and consent of the Senate, to *appoint*. There will, of course, be no exertion of *choice* on the part of the Senate. They may defeat one choice of the executive and oblige him to make another but they cannot themselves *choose*. They can only ratify or reject the choice he may have made. They might entertain a preference to some other person at the very moment they were assenting to the one proposed, because there might be no positive ground of opposition to him; and they could not be sure, if they withheld their assent, that the subsequent nomination

would fall upon their own favorite, or upon any other person in their estimation more meritorious than the one rejected." *The Federalist*, No. 66, Cooke ed. 1961, p. 449 (emphasis in original).

In *The Federalist*, No. 47, Madison wrote:

> "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." Cooke ed. 1961, p. 324.

He recognized the particular pertinence of these principles to the appointment power:

> "each department should have a will of its own, and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others." *The Federalist*, No. 51, Cooke ed. 1961, p. 348.

During the first Congress Madison said, "I conceive that if any power whatsoever is in its nature executive, it is the power of appointing, overseeing and controlling those who execute the laws," 1 *Annals of Congress* 481 (1789), and that *"if the legislature determines the powers, the honors, and emoluments of an office we should be insecure if they were to designate the officer also," id.* at 581-82 (emphasis added).[2]

In *The Federalist*, No. 76, Hamilton made the point even clearer when he argued that the Senate's effective veto on appointments would be beneficial:

[2] See generally The Federalist, No. 51, Cooke ed. 1961, pp. 347-50; *id.*, No. 73, at 494-95.

> "... the necessity of their concurrence would have a powerful, though in general, a silent operation. It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from state prejudice, from family connection, from personal attachment, or from a view to popularity." Cooke ed. 1961, p. 513.

Finally, Jefferson stated in a letter:

> "Nomination to office is an executive function. To give it to the legislature as we do is a violation of the principle of separation of powers. It swerves members from correctness by temptation to contract for office for themselves and to corrupt barter for votes, and destroys responsibility by dividing it among a multitude. By leaving nomination in its proper place among executive functions the principle of the distribution of powers and responsibility weighs with its heaviest force upon a single head." Quoted in *Field* v. *People*, 3 Ill. 79, 141 (1839).[3]

What case law there is strongly supports these propositions. In *Springer* v. *Government of the Philippine Islands*, 277 U.S. 189 (1928), the Governor General of the Philippines challenged the validity of an act of the Philippines legislature creating the National Coal Company and the Philippine National Bank. That legislation provided that the Board of Control would be composed of the Govenor General, the President of the Philippines Senate, and the Speaker of the Philippines House. The President and Speaker were to elect the directors of the company. This

[3] See also Cutler and Johnson, "Regulation and the Political Process," 84 Yale L.J. 1395, 1411 (1975): "The President is the only nationally elected officer and thus, at least arguably, our most politically accountable official."

Court held that the organic act of the Philippines vested the Governor General with executive power, including the power to appoint governmental officials. The legislation was held invalid on the ground that the legislature could not confer an executive power on some other body or person.

In *United States* v. *Ferreira*, 54 U.S. 39 (1851), Chief Justice Taney, referring to commissioners empowered to decide claims arising under a treaty with Spain, wrote that:

> "... the power of appointment is in the President, by and with the advice and consent of the senate; and Congress could not by law, designate the persons to fill these offices." *Id.* at 50-51.

The limited nature of the Article II, § 2, cl. 2 grant of participation by the Congress in the appointment of executive officers was made plain in *Myers* v. *United States*, 272 U.S. 52, 164 (1926): "... the provisions of the second section of Article II, which blend action by the legislative branch, or by part of it, in the work of the executive, are limitations to be strictly construed and not to be extended by implication." See also *Humphrey's Executor* v. *United States*, 295 U.S. 602, 625-26 (1935), noting that the Federal Trade Commission is independent of the executive *"except in its selection"* (emphasis in original).[4]

Scholars have similarly concluded that "Congress has no authority to appoint persons to the Federal Government or to indicate the persons to be appointed by the Executive." 2 Antieau, *Modern Constitutional Law* § 13:14, at 514 (1969); see also Mechem, *Public Offices and Officers*, §§ 102-06, at 42-44 (1890). Two Attorneys General have

[4] See also Ponzi v. Fessenden, 258 U.S. 254, 262 (1922); J.W. Hampton, Jr. & Co. v. United States, 276 U.S. 394, 406 (1928); O'Donoghue v. United States, 289 U.S. 516, 530 (1933).

concurred in this view. 37 Ops. Att'y Gen. 56, 58 (1933); 39 Ops. Att'y Gen. 61, 62 (1937). Presidents have vetoed legislation specifically on these grounds: Richardson, *Messages and Papers of the Presidents* (1896-99), VIII, 2211 (President Arthur); H. Doc. No. 529, 72nd Cong. 2d Sess., 76 *Cong. Rec.* 2445 (1933) (President Hoover); H. Doc. No. 252, 75th Cong., 1st Sess., 81 *Cong. Rec.* 4779 (1937) (President Roosevelt); Weekly Compilation of Presidential Documents VII, 1634-35 (1971) (President Nixon).

(2) *The FEC's Members Are Officers of the United States and Must Therefore Be Appointed by the President.*

The Court of Appeals stated that "Congress cannot constitutionally appoint the members of a commission or agency that performs primarily executive or judicial functions" (op. at 1575). That is an incorrect statement of the proper constitutional standard. *All* federal officials meeting certain tests of tenure, duration, emoluments, and duties are officers of the United States, and therefore must be appointed by the President, the courts or the head of a department pursuant to the Constitution. The only exception is that, when subordinate employees of the legislative and judicial branches perform solely functions which those branches could perform directly, it necessarily follows that they may be appointed by those branches. Thus the proper test is not how to characterize the "primary" functions of an agency—inevitably a difficult and subjective test—but whether the agency is charged with performing any substantial functions which under the constitutional scheme are to be performed by officers of the United States. Under that test, there can be no doubt of the outcome here.[5]

[5] See pp. 204-07, *infra*, for our alternative argument that even if the Court of Appeals' standard is correct, the FEC does perform "primarily executive or judicial functions," and accordingly, on the Court of Appeals' own reasoning, its members must be appointed by the President.

In *United States* v. *Hartwell*, 73 U.S. 385, 393 (1867), this Court said:

> "An office is a public station, or employment, conferred by the appointment of government. The term embraces the ideas of tenure, duration, emolument, and duties."

The Court held that a Treasury clerk was an officer, noting that his duties "were continuing and permanent, not occasional or temporary," *id.* The FEC members are clearly officers under the *Hartwell* test. Contrast *United States* v. *Germaine*, 99 U.S. 508, 512 (1878). In 18 Ops. Att'y Gen. 409 (1886), the Attorney General stated that the President must appoint the Chief of Examiners of the Civil Service Commission, saying:

> "The examiner is certainly, under this act, an officer, as distinguished from a mere agent, clerk, or employee. His station embraces the ideas of tenure, duration, emolument, and duties, and then becomes an office." See also 11 Ops. Att'y Gen. 209 (1865).

Finally, in *United States* v. *Maurice*, 26 Fed. Cas. 1211, 1214 (Cir. Ct. D. Va. 1823), Chief Justice Marshall stated a similar test for "officership," also met by the FEC members:

> "Although an office is 'an employment' it does not follow that every employment is an office. A man may certainly be employed under a contract, express or implied, to do an act, or perform a service, without becoming an officer. But if a duty be a continuing one, which is defined by rules prescribed by the government, and not by contract which an individual is appointed by government to perform, who enters on the duties appertaining to his station, without any contract defining them, if those duties continue, though the person be changed; it seems very difficult to distinguish such a charge or employment from an office, or the person who performs the duties from an office. If it may be converted into a contract, it must be a contract to perform the duties of the office of agent of fortifications, and such an office must exist with ascertained duties, or there is no standard by which the extent of the condition can be measured."

See also Mechem, *supra*, §§ 1-20, at 1-9.

The congressional attempt to appoint a majority of the members of the FEC is flatly at odds with the language, history and case law of the Constitution. See Watson, "Congress Steps Out; A Look at Congressional Control of the Executive," 63 Cal. L. Rev. 983, 1037-43 (1975). Were the Court to permit this usurpation of executive power, there would be no principled constitutional bar to congressional appointment of the members of the Securities and Exchange Commission or the National Labor Relations Board. *Cf. Gravel* v. *United States*, 408 U.S. 606, 624-25 (1972).[6]

The majority below apparently believed that appellants' arguments would preclude congressional appointment of its own inferior officers (op. at 1572). This is plainly incorrect, for such inferior officers are not "officers of the United States" subject to presidential appointment. The power of the legislative and judicial branches to select their own inferior officers to assist them in their day-to-day functioning (*e.g.*, the Secretary of the Senate or the Doorkeeper of the House) is wholly consistent with the separation of powers, and indeed necessarily follows from that very

[6] Indeed, Congress is now considering a proposal that would vest the appointment of several Governors of the Postal Service in Congress. H.R. 2445, 94th Cong., 1st Sess. (1975) § 8.

principle. Thus, such "officers of the court" as bailiffs are not "officers of the United States" and are appointed by judges of federal courts. *United States* v. *Swift*, 139 F. 225, 227 (1st Cir. 1905). The same principle applies to the Secretary of the Senate and similar positions. If it were otherwise, the executive would be able to encroach into the legislative and judicial spheres, just as in the FEC's mode of appointment Congress has encroached into the executive sphere.

Clearly, bailiffs (as agents of the courts) and the House Doorkeeper and others (as agents of the Congress) perform *only* judicial and legislative functions respectively. Everything they do could be done by a judge or justice or by the Congress. That is not the case with the FEC. Congress' function is to enact laws, not to render advisory opinions about the effects of statutes already passed, not to set general policy with respect to such statutes, and certainly not to enforce such statutes through civil actions.

Indeed, the Court of Appeals agrees that "the Commission has . . . been delegated various quasi-judicial and quasi-executive powers" (op. at 1575). Because it did not address these powers on grounds of lack of ripeness, it declined to "invalidate on its face a statutory provision that confers" such powers, *id.* at 1576. Judge MacKinnon's dissent provides the complete answer to this contention:

> "In light of the deep and pervasive involvement of the Commission in the present and anticipated political affairs of the plaintiffs . . . . [and because the] power to anticipate violations and seek injunctions against persons suspected of planning activity which may be unlawful certainly gives the enforcement role of the Commission a much more immediate impact on plaintiffs' affairs than does the normal statutory enforcement procedure which is brought into play only after a violation has occurred . . . . I would hold that [Questions 8(a) through (d)] are ripe for review" (op. at 1611-12).

Judge Tamm's dissent underlined the practical reasons for considering these issues ripe: "It is clear that all planning in this political season must be made with FECA and the Commission in mind" (op. at 1607). Finally, the FEC has now begun promulgating rules, including rules relating to Title 18,[7] see, *e.g.*, 40 *Fed. Reg.* 32951 (Aug. 5, 1975) (FEC Notice 1975-18). Political candidates, parties and committees must follow these rules in their daily activities, and their actions are inevitably affected thereby.

The court below also relied on the suggestion made by the FEC's Special Counsel during oral argument that the FEC "would not utilize in [sic] its civil enforcement power but would instead refer appropriate cases to the Department of Justice. . ." (op. at 1576). The court specifically stated that the civil-enforcement power raised "very serious constitutional questions," but believed that the issue posed by that power was not ripe for adjudication since no party had been joined in a civil-enforcement action initiated by the FEC, *id.*

Yet by letter of August 28, 1975, FEC Chairman Curtis abandoned the position taken by the FEC at oral argument and threatened appellant Committee for a Constitutional Presidency—McCarthy '76 with enforcement action, declaring that "[t]he Act also assigns civil jurisdiction to the Commission of all apparent violations of the Act and Sections 608, 610, 611, 613, 615, 616 and 617 of Title 18 of the United States Code." (See Appendix B to this brief for the

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[7] In its main brief below, the FEC disclaimed any rulemaking power with respect to Title 18. *On the same day that brief was filed*, the FEC issued a Notice of Proposed Rulemaking, 40 Fed Reg. 23833-34 (June 2, 1975), involving, *inter alia*, statutory sections of Title 18.

full text of the letter.) When the average citizen threatened with enforcement action reads such a statement he can reasonably assume that the FEC will use the power it so clearly asserts.

Moreover, since appellants make a facial attack on the mode of appointment of the FEC it is of no consequence whether or not the FEC may use or has used all its powers. The question is whether the statute as written—and which beyond question grants such powers—stands or falls as a violation of the separation of powers and due process doctrines. Even if the court below was correct that the constitutionality of as-yet-unexercised powers of the FEC is not yet ripe for review as distinct questions, a quite different issue is presented by appellants' attack on the method of appointment—an issue no one claims is unripe. In determining whether the Commissioners are officers of the United States, this Court should look not only to powers they have thus far exercised, but to all the powers Congress gave them, for the question is whether *the offices which Congress created and intended to be performed* are in their nature such that only the President can constitutionally make appointments to them.

The issue of the FEC's mode of appointment is ripe for review, and requires a decision that that mode of appointment is facially unconstitutional as an abridgement of the President's power to appoint "officers of the United States."

(3) *The FEC Performs Primarily Executive and Judicial Functions; Its Members Must Therefore Be Appointed by the President.*

The court below considered only one of the FEC's powers, the power to render advisory opinions; it declined to address the rest of the powers on the ground they were not ripe for review (op. at 1576). Even as to advisory opinions, however, the majority below did not address

Judge MacKinnon's dissenting view that the advisory-opinion power interferes with the judgments of federal prosecutors interpreting the criminal statutes (op. at 1579). The advisory-opinion power is in a sense judicial[8] and in a stronger sense executive; what is clear is that it is in no sense legislative. From every practical standpoint it is the most important of the FEC's powers. Thus an agency possessing that power, and exercising it on a massive scale, cannot possibly be held to be "primarily legislative" in its functions.

Imagine the situation that might exist if a legislature could render advisory opinions respecting statutes previously enacted. Fear of favoritism and undue influence is one of the stated rationales for much of the challenged legislation. The ability of Congress to render advisory opinions, especially in an area such as electoral law, would open unprecedented vistas of favoritism. Because advisory opinions contemplate the application of statutory provisions to specific and concrete factual situations, they clearly fall outside the category of legislative decisions. The Court of Appeals erred in holding that the FEC's advisory-opinion power was legislative.

In support of its contention that the FEC may be appointed by Congress, the Court of Appeals compares some of the FEC's functions to the Comptroller General's certification and audit functions. But, as Judge MacKinnon points out in dissent, the Comptroller General is appointed by the President, 31 U.S.C. § 42, op. at 1615. The Comptroller General, like the FEC, performs functions which are partly legislative and partly executive, *United States* v. *Stewart*, 234 F. Supp. 94, 99 (D.D.C.), *aff'd*, 339 F2d 753 (D.C. Cir. 1964).

The FEC's other powers are even more clearly executive or judicial. The civil-enforcement power, 2 U.S. C. §

[8] See United States v. M'Cabe, 129 F. 708, 711 (1st Cir. 1904).

437g, which includes receiving complaints, investigating violations, attempting to correct violations by conciliation and persuasion, and instituting civil-enforcement actions, is executive beyond question. To emphasize the importance of the civil-enforcement power, Section 437c(b) grants the FEC *primary* civil enforcement power over the FECA and certain enumerated sections of Title 18. And if the FEC requests, the Attorney General "shall" institute civil-enforcement actions and "shall" report to the FEC within 60 days as to the action he has taken. § 437g(a)(7), (b).

The legislative sponsors clearly envisaged a vigorous enforcer, not one that would abdicate its responsibilities at the first challenge. See remarks of Rep. Frenzel, a key supporter of the FEC, 120 *Cong. Rec.* H 10908 (daily ed. Nov. 20, 1974). Similarly, the FEC's powers "to formulate general policy," 2 U.S.C. § 437d(a)(9), and to make rules, *id.*, § 437d(a)(8), are quintessentially policy-making functions falling within the executive sphere.

Although in its brief filed in the Court of Appeals (FEC Brief at 55), the FEC attempted to disavow any rulemaking power with respect to Title 18, U.S.C., in its first action dealing with an actual election (the special New Hampshire Senate race) the FEC issued sweeping "interim guidelines" replete with rules referring to and interpreting sections of Title 18, FEC Notice 1975-34, 40 *Fed. Reg.* 40668-71 (Sept. 3, 1975). The rulemaking power has thus now been exercised, and its validity is plainly ripe for decision.

With respect to the operation of Subtitle H, the FEC has numerous powers, all of which are plainly executive. The FEC must certify the eligibility to receive payments of candidates during the nominating, national-convention, and general-election stages of the campaign, §§ 9005, 9008(g), 9036. The FEC must determine whether circumstances warrant repayments from candidates or parties

back to the Treasury, §§ 9007, 9008(h), 9038. The FEC is authorized to issue such regulations as it deems necessary to carry out its duties and functions under Subtitle H, §§ 9009, 9039. And finally, it has civil-enforcement power to implement the federal subsidy provisions, §§ 9011, 9040.

The sum effect of the FEC's battery of powers is that the FEC is the enforcer of the challenged statutes. Its record-keeping functions, 2 U.S.C. § 438 (deemed to be legislative by the court below, op. at 1616-17), are merely supportive of its enforcement powers. To hold to the contrary—that the enforcement provisions are merely adjuncts of the record-keeping duties—would, as the court below said in a different context (op. at 1582), be "Aesopian in the sense of the dog losing his bone going after its deceptively larger reflection in the water."

Especially in view of the vagueness of many of the statutory provisions and the great discretion vested in the FEC, the enforcement provisions, and particularly the advisory-opinion power, are plainly the FEC's primary function. As a practical matter, most questions arising under these statutes will be resolved, as they are being resolved today, by the exercise of the advisory-opinion power. Where that fails, the FEC has ample further powers to compel compliance with its wishes. To hold that powers of this sort, because joined with record-keeping functions, may be exercised by a congressionally appointed agency is to do drastic violence to the constitutional plan. Indeed, in the context of these statutes, even the record-keeping functions are not properly classified as legislative, because their primary purpose is not to enable Congress to consider new legislation but to enable the FEC to collect the data and conduct the investigations on the basis of which the enforcement provisions are to be exercised.

(4) *Congressional Usurpation in the Electoral Area Is Particularly Unacceptable Given the Sensitive Issues and Conflicts of Interest Involved.*

The powers of Congress are quite precise: it creates offices, and officers of the United States assume their positions only after the Senate advises and consents to their appointment by the President. The appointment power, however, rests with the executive.

The FEC flagrantly violates these principles. By entrusting the appointment power to the majority and minority leaders of both Houses, as well as providing for confirmation by both Houses, Congress sought to create, not an independent Commission, but a Commission dependent on Congress and thus responsive to its will. Thus it is that Congress controls the majority of the appointments, the salaries, and appropriations and, through the legislative veto,[9] the manner in which much of the Act is administered by the FEC. 2 U.S.C. § 438.

[9] Under 2 U.S.C. § 438(c), rules relating to reporting and disclosure requirements promulgated by the FEC are subject to veto by one or both houses of Congress. The history of the veto parallels that of the appointment power. Thach, The Creation of the Presidency, 1776-1789, 35 *et seq.* (1969); Ginnane, "The Control of Federal Administration by Congressional Resolution and Committees," 66 Harv. L. Rev. 569, 576 *et seq.* (1953). Vesting veto power in Congress is just as unconstitutional as vesting appointment power there. Watson, "Congress Steps Out: A Look at Congressional Control of the Executive," 63 Cal. L. Rev. 983 (1975); Harris, Congressional Control of Administration 241 (1964); Jackson, "A Presidential Legal Opinion," 66 Harv. L. Rev. 1353 (1953). Congress' retention of the legislative veto is additionally unconstitutional because it is performed without the participation of the President, as the Constitution requires. See Statement of Antonin Scalia, Assistant Attorney General, Office of Legal Counsel, on Executive Agreements (S. 1251 and S. 632), before the Subcommittee on Separation of Powers, Committee on the Judiciary, U.S. Senate May 15, 1975, at 11-23. Yet a further unconstitutional feature is that Congress may not delegate legislative power to one of its Houses, as the veto provision does. The Federalist, No. 51 (Madison), Cooke ed. 1961, p. 350; Scalia, *id.* at 18.

It is naive to expect an agency subject to the control of a single branch to act independently of the will of those who control that branch. Indeed, as Watson, *supra*, at 1043, points out ". . . the denial to Congress of the power to name public officers [was] intended to prevent opportunities for self-serving acts." Opportunities for self-serving acts abound under the FECA, demonstrating yet again that it is an incumbent-protection statute. The FEC was created by Congress, staffed by Congress, and draws its sustenance and direction from Congress. This is so even though it exercises numerous executive and judicial functions, *e.g.*, rendering advisory opinions, law enforcement, rulemaking, 2 U.S.C. §§ 437c(b), 437d(a) (6) and (9), 437g(a) (5) and (7), and similar functions with respect to Subtitle H, §§ 9005, 9007-09, 9011, 9036, 9039, and 9040. The Constitution forbids the creation of such an agency.[10] If the FEC is to exercise such functions, it must be appointed pursuant to Article II. Otherwise, it must be divested of those functions.

The answer of the Court of Appeals is to rely on cases upholding Congress' power under Article I, § 4, cl. 1 of the Constitution to regulate federal elections. But the power to regulate elections is no different from the other substantive powers of Congress (the power to tax, the power to regulate interstate commerce, etc.), and the court below makes no effort to distinguish it. Like all Congress' other substantive powers, the power to regulate elections is to be exercised "by Law," as Article I, § 4, cl. 1 expressly provides. Congress' function, with respect to elections as to other matters, is to legislate, not to administer. If what Congress has done here can be justified by its substantive power over federal elections, then Congress could equally vest in itself the appointment of all the independent regulatory agencies, and even agencies of the executive.

[10] *Cf.* United States v. Nixon, 418 U.S. 683, 693 (1974); Marshall v. Gordon, 243 U.S. 521, 536 (1917); Kilbourn v. Thompson, 103 U.S. 168, 190-91 (1881); Confiscation Cases, 740 U.S. 454, 457-9 (1869).

There is much language in the legislative history, appellees' briefs below, and the Court of Appeals' decision (op. at 1519) about the need for an "independent agency" to administer the challenged statutes. Appellants agree that whatever regulation Congress may constitutionally enact in the most sensitive area of electoral politics is best performed by an independent agency. But "independent" is exactly what this Commission is not; it is wholly subordinate to the legislative branch. A truly independent agency is, of course, created by the time-honored process: appointment by the President for fixed terms enacted by law, with confirmation by the Senate. Congress' unwillingness to use that process here is plainly a reflection of its desire that electoral regulation be conducted *not* independently, but under its own tight and continuous control.

As this Court stated in affirming the fundamental doctrine of separation of powers in *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 176 (1803):

> "The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these may, at any time, be passed by those intended to be restrained?"

The FEC is an instance where Congress has exceeded its constitutional powers. What it has done cannot be sustained by the judiciary, which, at least since *Marbury* v. *Madison*, has been committed to "maintaining the constitutional plan of separation of powers." *Glidden Co.* v. *Zdanok*, 370 U.S. 530, 536 (1962) (opinion of Justice Harlan); *Massachusetts* v. *Mellon*, 262 U.S. 447, 488 (1923).

B. *The Challenged Legislation Is Too Vague and Leaves Excessive Discretion to the Administering Authority.*

The challenged legislation renders criminal an enormous variety of political acts, 2 U.S.C. § 441, 18 U.S.C. § 608(i), I.R.C. §§ 9012, 9042. It is, however, a morass of uncertainty as to which activities are permitted and which lead to a federal prison. The sponsors of the legislation made no effort to deny this, but rather sought to avoid the problem by delegating power to the FEC. The court below took the same view (op. at 1581). The criminal provisions of the FECA Amendments, in particular, do not convey "sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices." *Jordon* v. *DeGeorge*, 341 U.S. 223, 231-32 (1951).

For example, an incumbent Senator running for reelection—not yet nominated, but unopposed in the primary—authorizes an expensive, in-depth poll of his constituents' views on public issues. Is that an expenditure under 18 U.S.C. § 608(c)? If so, is it to be allocated to the "campaign" for nomination or to the general election? The answers to these questions may determine whether the candidate spends six years in the New Senate Office Building or one year in Lewisburg. The legislation, however, contains not a glimmer of guidance to the most scrupulous candidate.

For those not authorized to seek advisory opinions (anyone who neither holds federal office nor is a candidate or a political committee, 2 U.S.C. § 437(f)), the legislation is plainly so vague as to give no adequate guidance. Political activities must either be avoided or undertaken at the risk that prosecutors or courts will decide after the event that a crime has been committed. For those entitled to seek an advisory opinion, the situation is little different. The legislation is so vague that persons acting in full good faith may well think that no reasonable person would believe that a

particular act was unlawful, *e.g.*, a poll as an expense of the contest for nomination, yet learn only too late that others disagree. There is, in short, insufficient notice even as to the circumstances in which an advisory opinion should be sought.

If the presence of the FEC is thought to cure the vagueness problem, that presence merely renders the statute unconstitutional in another way. In *Speiser* v. *Randall*, 357 U.S. 513 (1958), this Court held that tax-assessment procedures which shift the burden of proof to the taxpayers are not adequate where First Amendment issues are at stake. The Court said there that "the operation and effect of the method by which speech is sought to be restrained must be subjected to close analysis and critical judgment in the light of the particular circumstances to which it is applied." *Id.* at 520. And this Court has held unconstitutional in a long and important line of cases the delegation of excessive discretion to administering officers. See, *e.g.*, *Saia* v. *New York*, 334 U.S. 558 (1948); *Shuttlesworth* v. *Birmingham*, 394 U.S. 197 (1969).

This Court has repeatedly emphasized that "standards of permissible statutory vagueness are strict in the area of free expression . . . . Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." *NAACP* v. *Button*, 371 U.S. 415, 432-33 (1963). If citizens are not clearly informed of what is unlawful, they will necessarily "steer far wider of the unlawful zone," *Speiser* v. *Randall*, *supra*, at 526. Indeed, this Court's characterization of the statute struck down in *Keyishian* v. *Board of Regents*, 385 U.S. 589, 604 (1967), accurately applies here: "Vagueness of wording is aggravated by prolixity and profusion of statutes, regulations, and administrative machinery, and by manifold cross-references to interrelated enactments and rules."

When both criminal penalties and First Amendment rights are involved, loose methods of enforcement tolerable elsewhere are plainly insufficient. Impartial, well-monitored and fair procedures must be provided, and the enforcing tribunal must be guided by legislation which provides adequate direction.

The FEC's power to make rules and general policy and to issue advisory opinions constitutes a system of prior restraint. *Bantam Books, Inc.*, v. *Sullivan*, 372 U.S. 58 (1963). Any system of prior restraint "comes to this Court bearing a heavy presumption against its constitutionality." *Id.* at 70. Such a system "avoids constitutional infirmity only if it takes place under procedural safeguards designed to obviate the dangers of a censorship system." *Freedman* v. *Maryland*, 380 U.S. 51, 58 (1965). The statute here fails to meet these standards in several respects. It empowers the Commission to issue regulations, rulings and advisory opinions that impose a system of prior restraint on political activity and speech without any judicial determination, *id.* at 58. Moreover, the statute fails to meet those procedural requirements that this Court has repeatedly identified: "*first*, the burden of instituting judicial proceedings, and of proving that the material is unprotected, must rest on the censor; *second*, any restraint prior to judicial review can be imposed only for a specified brief period and only for the purpose of preserving the status quo; *third*, a prompt final judicial determination must be assured." *Southeastern Promotions, Ltd.*, v. *Conrad*, 43 L. Ed. 2d 448, 460 (1975).

The legislation under attack is a mountain of unanswered questions as to what is legal and what is illegal.[11]

[11] For example, Rep. Frenzel candidly described the statutory definition of "contribution" as "rather vague and nebulous." He hoped that the FEC would clarify the definition "on a case-by-case basis" by means of advisory opinions. 120 *Cong. Rec.* H 10910 (daily ed. Nov. 20, 1974).

(continued)

Indeed, the very authorization of advisory-opinion and rulemaking power demonstrates that Congress deliberately

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[11] (continued)

The following lengthy but by no means complete summary suggests how many important sections of the challenged statutes are impermissibly vague:

(1) The definitions of "candidate," 2 U.S.C. § 431(b); 18 U.S.C. § 591(b); I.R.C. §§ 9002(2), 9032(2). Obviously, since so much of the law turns on who is and who is not a candidate, this definition should be precise. Yet, note particularly 2 U.S.C. § 431(b) (2) and 18 U.S.C. § 591(b) (2): do these subsections embrace a preliminary poll to "test the waters" for a possible candidacy? If so, is it to be allocated to the candidate's primary or general-election expenditure limit? Does "candidacy" include trips around the state or district to talk to political leaders to see if sufficient support exists to begin a campaign? Does it include similar trips to talk with citizens to determine what issues are of major concern to them?

(2) The definitions of "political committee," 2 U.S.C. § 431(d); 18 U.S.C. § 591(d); I.R.C. §§ 9002(9), 9032(8). Does this include even an informal gathering of a few individuals who make the preliminary soundings and policy formulations described in the preceding paragraph? Does it, for instance, encompass a group analyzing a potential candidate's chances?

(3) The definitions of "contributions," 2 U.S.C. § 431(e); 18 U.S.C. § 591(e); I.R.C. § 9032(4), and "expenditure," 2 U.S.C. § 431 (f); 18 U.S.C. § 591(f); I.R.C. § 9032(9). The definition of "expenditure" appears to include all contributions. If it does, the consequences are enormous, since an individual then could not make both a contribution and an independent expenditure if the aggregate amount exceeded the expenditure limit. There is considerable additional lack of clarity in these sections. Are repaid loans to candidates to be considered campaign expenditures? When are the facilities of a newspaper, magazine, or broadcast station "controlled" by a political candidate? 2 U.S.C. § 431(f) (4) (A); 18 U.S.C. § 591(f) (4) (A). See also 2 U.S.C. § 434(e).

(4) Candidate expenditure limits. How are contributions and expenditures to be allocated with respect to primary and general elections under the limits imposed by 18 U.S.C. § 608?

(continued)

delegated vast discretion to the FEC. Annually, the FEC must decide hundreds or even thousands of cases which regulate political conduct and which bristle with First Amendment questions. Some questions may be general; others will be more particular. The answers to these ques-

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[11] (continued)

(5) Title 2 U.S.C. § 437a. The vagueness and other unconstitutional aspects of this section were sufficient for it to be declared unconstitutional by the court below.

(6) The powers of the FEC, 2 U.S.C. § 437d.

(7) The enforcement of the challenged statutes, 2 U.S.C. § 437g(5)-(7).

(8) The candidate-disqualification provision, 2 U.S.C. § 456.

(9) The provision on contribution "earmarking," 18 U.S.C. § 608(b) (6). The vagueness of this subsection is palpable, and the possibilities for discriminatory enforcement are immense.

(10) The provision for allocating expenditures by candidates for a presidential nomination for use in two or more States. *Id.*, § 608(c) (4). The necessity of determining the voting-age population "which can reasonably be expected to be influenced by such expenditures" is particularly egregious.

(11) Expenditures relative to a clearly identified candidate, *id.*, § 608(e), previously discussed at length, *supra*, pp. 107-15.

(12) The scheme for payments to candidates eligible for federal subsidies in general-election campaigns for the Presidency when insufficient funds are available, I.R.C. § 9006(d). This section vests enormous authority in the Secretary of the Treasury with almost no standards to guide his discretion.

(13) The exception from the limitations on expenditures by party national committees for their presidential nominating conventions. *Id.*, § 9008(d) (3). The same comments made in paragraph 12 apply here.

(14) The scheme for payments to candidates eligible for federal subsidies in campaigns for nomination by a party for the office of President. *Id.*, § 9037(b). The same comments made in paragraph 12 apply here.

tions will in every case decide the level of communication in which candidates and their supporters may engage.

In effect, Congress delegated to the FEC the power to make the delicate judgments between regulation and free political communication—the power frequently to decide who will win an election.

The breadth of the FEC's power and the virtually unchecked discretion it enjoys give it dramatic power over what kind of and how much speech particular candidates for federal office may engage in. Merely as a few of literally hundreds of possible examples of issues that have already come or will come before the FEC:

- Are private contributions eligible for matching government subsidies under Chapter 96 without regard to the costs incurred raising them, and without regard to whether any benefit is conferred on the contributor in exchange therefor? See FEC Notice 1975-40, 40 Fed. Reg. 41933 (Sept. 9, 1975).

- How should expenditures made by one candidate for federal office incurred while campaigning on behalf of a candidate for another federal office be allocated between those candidates? See FEC Opinion of Counsel letter 1975-48.

- What is the applicable spending limit for a candidate running for two federal offices simultaneously? See FEC Notice 1975-44, 40 Fed. Reg. 42839 (Sept. 16, 1975).

- How are the costs of a public-opinion poll made by a candidate before the primary election, but testing issues applicable in both the primary and the general election, to be allocated?

- How are the costs of printing brochures advocating the election of several candidates for different federal offices to be allocated? What if such brochures also include candidates for state or local office?

- In presidential elections, how are costs to be allocated when expenditures are made that have an effect on more than one state?

- If, as appellees contend, repayments of loans do not count as expenditures, can the contributor who made the loan make another contribution after the loan is repaid if the total of the loan and contribution together exceed the statutory limit?

Quite apart from issues of statutory vagueness, see *supra*, pp. 211-16, the questions the FEC must decide—almost necessarily on an *ad hoc* basis—will affect election results, no matter what answers it ultimately provides.

The FEC can investigate any citizen who engages in any political activity. Many of the statutory provisions, *e.g.*, 18 U.S. C. § 608(e), create unprecedented vistas for discriminatory and partisan enforcement. See *supra*, p. 213 n. 11. Clearly not all volunteer or independent activity can be monitored. Picking and choosing is necessary, and unwitting violation inevitable. The discretion granted is so great and timing in politics so important that judicial review will in most cases simply not afford effective protection against mistakes which will deprive some citizens of their rights. Corrupt or overzealous commissioners can turn these enormous powers to improper uses which stagger the imagination. Politicians eager to punish their enemies will no longer look to the tax laws. They will look to the election "reform" law instead.

If it is unconstitutional for a municipality to require that anyone desiring to use a loudspeaker obtain per-

mission of the police chief, *Saia* v. *New York*, *supra*, it is surely *a fortiori* unconstitutional to delegate to the FEC vast discretion to regulate virtually all political communication by federal candidates and their supporters.[12] If political freedom is to be regulated like economic arrangements, the "hands off" strictures of the First Amendment will be lost completely.

Clearly, the enforcement mechanisms do not meet the exacting standards of the First Amendment. The model upon which the FEC was purportedly created is that of the "independent" administrative agencies, to which considerable economic regulating is delegated. These agencies perform policy-making functions and are more politically responsive than courts because their members' terms are fixed by statute.

The independent agencies are at the very moment the subject of intense criticism for being "captured" by the interests they were supposed to regulate. See Cutler and Johnson, *supra*, at 1397. The Senate recently passed a bill to establish an Agency for Consumer Advocacy (to act as an advocate for consumers before federal agencies), S. 200, 94th Cong., 1st Sess. (1975), the entire *raison d'etre* of which is that only producer interests are fully represented before the other agencies.

What role the independent agencies should play in the area of economic regulation is a matter left primarily to legislative judgment. Different standards apply, however,

[12] FEC Chairman Curtis has outlined the dangers: "If this Election Commission doesn't show wisdom and understanding it could go too far, or, even more practical, they could build upon this new federal agency and give it more, and more, and more power, which would be the great danger, I would think, but right now I don't believe it's actually a danger, and hopefully we have the judgment not to go this far." Transcript of "Martin Agronsky's Evening Edition," prepared by the FEC, at 16-17.

when political speech is the subject of regulation. See *supra*, pp. 41-42.

If independent agencies have not fulfilled the hopes placed in them, far less can be expected of the FEC. Here, the appointment power is given to some of the very interests supposed to be regulated, creating an agency necessarily responsive to those in power in Congress. Given the manner of the appointment, the shortness of term, reliance for appropriations, and the legislative veto, the FEC seems designed, not to be "captured" by the regulated, but to represent them from the very start.

Bipartisan election commissions in the states have a sad history of unfair enforcement of state election laws, see Comment, "Bipartisan Election Administration—New York City: Pruning the Electoral Thicket," 84 Yale L.J. 61 (1974). The court below expressly viewed the mode of appointment as being on a bipartisan (rather than a nonpartisan) basis (op. at 1519). The FEC is an even greater danger because of the vast powers it exercises in this most sensitive area.[13] In the long run, the regulations promulgated by the FEC will reflect a responsiveness to those who hold power, contrary to the exacting standards called for by the First Amendment. *Speiser* v. *Randall*, *supra*; see also *Tumey* v. *Ohio*, 273 U.S. 510 (1927).[14]

There may, indeed, be constitutional leeway for an independent agency to perform administrative tasks, such as determining what reporting and disclosure forms are

[13] As the ACLU has said, ". . . bi-partisanship in the makeup and operation will naturally tend to favor the interests of the two major parties and their nominees." ACLU Report at 24.

[14] Proposals now before Congress, moreover, seek to give the FEC vast power over communications between citizens and governmental officials and criminal enforcement powers as well. See, *e.g.*, S. 776, 94th Cong., 1st Sess. (1975).

proper and acting as a custodian for the reports of candidates and political committees. But the regulation of conduct falling within areas protected by the First Amendment calls for legislative exactitude so that those affected will have adequate notice of what the law permits and what it prohibits, and to guide those who must administer it. There is, therefore, no room for great administrative discretion or for an enforcement process controlled by the legislative branch itself.

Like the postal statute in *Lamont* v. *Postmaster General*, 381 U.S. 301 (1965), which "sets administrative officials astride the flow of mail to inspect it, appraise it, write the addressee about it, and await a response before dispatching the mail," *id.* at 306, here the Act sets administrative officials astride the flow of politics in America, inspecting the campaign of this candidate, appraising the expenditures of that, writing this candidate about his campaign activity and awaiting a response before allowing it to go forward. This Court must surely conclude, as it did in *Lamont*, that "[t]he regime of this Act is at war with the 'uninhibited, robust, and wide open' debate and discussion that are contemplated by the First Amendment." 381 U.S. at 307.

C. *Subtitle H Unconstitutionally Grants Too Much Discretion to the FEC and to Incumbent Administrations.*

Subtitle H's allocation of federal funding will necessarily affect the outcomes of presidential elections, and the provision or non-provision of money is an act seriously affecting First Amendment rights. The directions given those administering these statutes, therefore, must be precise and detailed.

Subtitle H provides no such standards. For example, the FEC is permitted to increase the limit on spending for national conventions with virtually no criteria other than its

judgment whether an effective convention can be held at the prescribed level of spending, I.R.C. § 9008(d) (3). The construction of the courts below (op. at 1580) does not eliminate this vagueness.

Subtitle H is similarly excessively vague in the amount of discretion that it vests in incumbent administrations to determine the allocation of federal funding, I.R.C. §§ 9006(c)-(d), 9008(b) (3), and 9037. These sections, not discussed by the courts below, permit the Secretary of the Treasury, in effect, to govern the allocation of funds among candidates eligible for primary financing by making decisions about the likely success of third parties in the general elections. The Secretary must make an "equitable" distribution among primary candidates of each party, taking into account the sequence in which they have applied, *id.*, § 9007(b). The Secretary in 1976 must thus allocate between the incumbent President whom he serves and the President's opponents in his own party. The Secretary must also allocate funds to candidates for nomination, in situations where there are widely varying numbers of candidates within the two major parties. The exercise of that power by an incumbent administration could determine the outcome of both the nominating process and the general election. Such a grant of discretion is not only a perverse sort of remedy to emerge from Watergate; it is also flatly unconstitutional. *Cox* v. *New Hampshire*, 312 U.S. 569 (1941); *Saia* v. *New York*, *supra*.

D. *The Candidate-Disqualification Provision Is Unconstitutional.*

The FEC has the power to disqualify individuals from becoming candidates for federal office if it finds that those individuals, while candidates, "failed to file a report required by Title III" of the FECA (relating to reporting and disclosure requirements). The period of disqualification extends from the date of the FEC finding until one year

after the expiration of the term of the federal office for which the individual was a candidate, 2 U.S.C. § 456.

The language of this section is extremely imprecise, and accordingly vests the FEC with enormous discretion. What does "failed to file a report required by Title III" mean? Does it mean that the FEC can find such a failure if the required report is one day late? If the report omits required information? If the report is not written in the proper form? Is there a requirement of scienter? These and many other questions are unanswered by the statute.

The Court of Appeals deemed this issue unripe, but none of the opinions below indicated any support for Section 456. Quite the contrary, the majority expressed serious doubts about its constitutionality (op. at 1576). The court below did not consider, however, that the *in terrorem* effect of the candidate-disqualification section is considerable. Candidates will necessarily spend more of their time worrying over the correctness of their required reports and less time campaigning. Volunteers who help compile the required data will face the realization that an error by them could disqualify their candidate from future candidacies. The constitutionality of Section 456 is ripe for adjudication, and it should be invalidated.

Section 456 does not purport to give the FEC power to remove a victorious candidate for federal office from that office, a power which would be in flat conflict with *Powell* v. *McCormack*, 395 U.S. 486 (1969). Even as written, however, the section still conflicts with the theory of *Powell*, as supporters of the legislation recognized. Remarks of Rep. Frenzel, 120 *Cong. Rec.* H 7193 (daily ed. July 25, 1974). The qualifications for office expressed in the Constitution, see, *e.g.*, Article I, §§ 2, 5, were held in *Powell* to limit Congress' ability to exclude persons from office. Disqualification from being a candidate has the same effect. See Rosenthal, "Campaign Financing," *supra*, at 394.

Although this Court has not recognized an explicit "right" to be a candidate, it recently stressed that "[t]he right of a party or an individual to a place on the ballot is entitled to protection and is intertwined with the rights of voters," *Lubin* v. *Panish*, 415 U.S. 709, 716 (1974); see also *Bullock* v. *Carter*, 405 U.S. 134 (1972); *Williams* v. *Rhodes*, 393 U.S. 123 (1968). Lower federal courts have afforded considerable protection to candidates, while recognizing that the government can impose requirements such as age, residence, and citizenship, *Shakman* v. *Democratic Org. of Cook County*, 435 F.2d 267 (7th Cir. 1970); *White* v. *Snear*, 313 F. Supp. 1100 (E.D. Pa. 1970); *Stapleton* v. *Clerk for City of Inkster*, 311 F. Supp. 1187 (E.D. Mich. 1970); *Zeilinga* v. *Nelson*, 4 Cal. 3d 716, 484 P.2d 578 (1971).

This Court need not decide the issue of a "right to candidacy," however, since Section 456 is unconstitutional not only as an abridgement of the separation of powers but also as a prior restraint on the content of peaceful political activity. *New York Times Co.* v. *United States; ACLU* v. *Jennings, supra.* It should be declared invalid now without waiting until some unfortunate candidate in the future is tarred by allegations based on it, only to receive almost certain constitutional vindication later.

CONCLUSION

For the foregoing reasons, this Court should declare that the challenged statutes enumerated in the questions presented for review, *supra*, p. 5, are unconstitutional and should permanently enjoin their enforcement.

Respectfully submitted,

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September 19, 1975

CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of September, 1975, pursuant to Rules 33(1) and 33(3) (b) of the Rules of this Court, served all parties required to be served by causing three copies of the Brief of the Appellants to be delivered by hand to the following persons:

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APPENDIX A

Note on the Use of Election Statistics in the Record

The record contains two basic sets of campaign-financing statistics: (1) statistics on expenditures in the 1972 Senate general-election campaigns compiled by Roland J. Cole for a Ph.D. dissertation at the Kennedy School of Government at Harvard University, *Campaign Spending in Senate Elections* (1975) (hereinafter "Cole figures"); (2) statistics compiled by the Common Cause monitoring group on 1972 and 1974 congressional elections and the 1972 presidential election (hereinafter "Common Cause figures").

The proper use of the statistics depends on a clear understanding of the different assumptions on which each set was made and the strengths and weaknesses of those assumptions.

For example, appellees have criticized the Cole figures because (1) loan repayments are treated as expenditures, (2) all expenditures are treated as general-election expenditures where the candidate was unopposed for the nominations, and (3) in all other cases general-election expenditures are estimated and segregated from primary expenditures.

(1) As to the loan-repayment issue, the FECA provides no clue as to whether such loan repayments are to be included in expenditure totals or not, and the FEC has not yet ruled on the issue. Moreover, the point is academic; the table in Cole, *supra*, at 398-99, which compares Cole's figures with the Common Cause figures, makes it possible quickly to discern which candidates' expenditures might be substantially inflated by the inclusion of loan repayments. Such repayments do not affect the conclusions reached in this brief. For example, the Cole figures are relied on by appellants to analyze the five 1972 Senate campaigns in

which challengers defeated incumbents. In only one such case—Haskell vs. Allott in Colorado—were loan repayments of a relevant size, and there only marginally relevant.

(2) Cole's treatment of all expenditures by candidates unopposed for nomination as general-election expenditures is consistent with both common sense and experience.

(3) Appellees make much of the fact that Cole estimated general-election spending on the basis of the available data. To be sure, that data does not distinguish between general-election and primary-election expenditures, and absolute accuracy is not obtainable. But the FECA itself requires the distinction, and some attempt at differentiating the two kinds of spending has to be made if statistics from prior elections are to be at all useful. Indeed, agreed findings explain the process by which Cole distinguished between general-election and primary expenses, based on the date each expenditure was made. Findings II A 2, pp. 4-7; B 2, pp. 186-88; App. II-266-69, 568-70.

To be sure, absolute accuracy is not attained and is not claimed. "It is possible to segregate expenditure figures for such elections with reasonable accuracy, but not with certainty," *id.* II, B 2(c), p. 187; App. II-569. That the distinction between primary and general-election spending is difficult to make on the basis of existing reports is a peculiar argument for appellees to make, since it is a distinction employed by the challenged legislation to be enforced by criminal sanctions. If the distinction can not be rationally made, 18 U.S.C. § 608 is unconstitutional on its face. Indeed, at this very moment, the FEC is issuing guidelines allocating spending to particular candidates and particular elections. See, *e.g.*, FEC Opinion of Counsel letter 1975-48.

The act does not permit candidates to aggregate primary and general-election money. Candidates are not allowed to spend primary money for activities after the primary. And if expenditures are to be allocated to a

primary rather than to a general election, some effort must be made, even in an unopposed primary, to make it seem that the spending is to influence the primary.

The Common Cause figures—upon which the Court of Appeals placed exclusive reliance (op. at 1540 n. 105)—are thus misleading in the opposite direction; they make no attempt whatsoever to distinguish between primary and general-election spending. They give only spending totals for both elections lumped together, regardless of whether either or both were serious contests, and measure these against the "combined overall expenditure limit," that is, the total of limits for both elections plus the fund-raising allowance. It is plainly wrong to compare aggregate spending in previous years with a statutory limit which permits spending only at certain inappropriate times. This technique creates the appearance that the spending limits are far higher relative to past spending then they really are, since the vast majority of candidates had a serious contest in at most one election. See *supra*, p. 90. At the very least, the statute severely regulates the timing of campaign expenditures and thereby their effect on elections. While reference to the "overall combined limit" seems to enhance candidates' ability to spend, it does so only by requiring them to make expenditures far ahead of the general election. Money spent in June will affect far fewer general-election votes than money spent in October.

In addition, in some cases the primary is the only important race and substantial general-election spending is superfluous. In 1972, challenger Elizabeth Holtzman defeated long-time incumbent Emmanuel Celler in the Democratic primary in New York's Sixteenth Congressional District. She easily defeated her Republican-general election opponent, receiving 65.6 percent of the vote to his 22.9 percent. The Republican reported spending no money at all for either primary or general election, whereas Rep. Holtzman's total was $104,318. Findings II, A 3, p. 19;

App. II-299. Clearly the bulk of her funds was spent to defeat Rep. Celler in a very close race, although the Common Cause figures misleadingly suggest that it was spread over two campaigns.

The Common Cause figures suffer from other difficulties. For example, even though loans are clearly contributions under the provisions of the FECA Amendments, the Common Cause figures do not include them as contributions, Findings II, A 2(e), p. 6; App. II-268. Loan statistics are available in the agreed findings. *Id.* II, C 7, pp. 249-54; App. II-665-75.

Expenditure figures for previous elections, moreover, are not fully comparable to expenditures under the FECA Amendments. For example, the Consumer Price Index rose 18 percent between 1972 and 1974. See Findings II, C 4, 5 pp. 223-48; App. II-618-64 (charts demonstrating the impact of inflation on 1972 races, moreover, include no amounts expended prior to April 7, 1972, the effective date of the 1971 Act. *Id.* II, A 2, p. 4; App. II-267.

The FECA Amendments also vastly increase the costs of campaigning and the need to make larger expenditures than in prior campaigns. First, the need for accounting and legal help is increased by the disclosure requirements and the complexity of the FECA Amendments. In 1972, for instance, the Percy and Tower campaigns used computers to produce contributor or expenditure reports—the cost of compliance with FECA disclosure requirements in Tower's case being at least $30,000, Findings II, B 13, p. 195; App. II-575. Compliance with the disclosure provisions costs the same no matter what the size of the contribution. Increased reliance on small contributions thus means increased costs.

In addition, the limitation on individual contributions to $1,000 increases the costs of raising money because small contributions cost proportionately more than large

contributions to raise, *id.* II, B 41, pp. 200-01; App. II-580; Cole dep. tr. 384-86. The raising of small contributions is very expensive and, when direct-mail techniques are used, runs on the average of about 40 percent, *id.* II, B 50, p. 203; App. II-582. The 20-percent allowance for fund raising in the Act, therefore, is wholly inadequate and can by no means be treated, as appellees treat it, as a genuine increase in the limits. Since the whole purpose of direct mail is to reach likely contributors—that is, persons already convinced of a candidate's merit—fund-raising mailings have only a marginal campaign spin-off in contacting uncommitted swing voters. The most valuable mailing list is one which contains only names of already committed people.

APPENDIX B

FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

August 28, 1975

Mr. Ronald Cocome
Chairman
Committee for Constitutional
Presidency—McCarthy '76
1223 Connecticut Avenue, N.W.
Washington, D.C. 20016

Dear Mr. Cocome:

This is in response to your letter dated August 22, 1975 and to confirm the subsequent telephone conversation between Mr. Peter Roman, Chief of the Commission's Audit and Ivestigation Division, and Ms. Mary Monroe, your Committee Treasurer. As Mr. Roman arranged with your Committee, the Commission will begin an audit of your records on Tuesday, September 2, at 10:00 AM.

Title 2 of the United States Code requires the Commission to conduct audits of reports and statements filed under provisions of the Federal Election Campaign Act, as amended. The Act also assigns civil jurisdiction to the Commission of all apparent violations of the Act and Sections 608, 610, 611, 613, 615, 616, and 617 of Title 18 of the United States Code.

In addition, the Commission is specifically charged to correct any apparent violations ". . . by informal methods of conference conciliation and persuasion." As part of the Commission's continuing efforts to encourage voluntary compliance, the Commission has authorized the Audit and Investigation Division to audit all reports and records of Presidential candidates and their principal campaign com-

mittees. While part of this audit is, as your letter notes, designed as a "preliminary step towards certifying candidates eligible for matching Federal funds", it is designed to insure compliance with Federal election law and all of the interim guidelines issued by the Commission. In that regard, I note with regret that your letter makes reference to but one of our interim guidelines, out of the numerous guidelines issued to date dealing with both certification for matching payments and the disclosure and reporting requirements of Federal election law.

If you have any further questions or comments concerning the Commission's planned audit, I invite you to direct them to Mr. John G. Murphy, Jr., our General Counsel.

Sincerely,

/s/

Thomas B. Curtis
Chairman

CORRECTED COPY

Pages 38 & 76

Supreme Court, U. S.
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Nos. 75-436 and 75-437

In the Supreme Court of the United States

October Term, 1975

James L. Buckley, et al., appellants

v.

Francis R. Valeo, et al.

On appeals from the United States Court of Appeals for the District of Columbia Circuit and the United States District Court for the District of Columbia

BRIEF FOR THE ATTORNEY GENERAL AND THE FEDERAL ELECTION COMMISSION

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In the Supreme Court of the United States

OCTOBER TERM, 1975

NOS. 75–436 AND 75–437

JAMES L. BUCKLEY, ET AL., APPELLANTS

v.

FRANCIS R. VALEO, ET AL.

ON APPEALS FROM THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE ATTORNEY GENERAL AND THE FEDERAL ELECTION COMMISSION [1]

OPINION BELOW

The opinions of the court of appeals (J.S. App. 1505–1623 [2]), adopted in relevant part by the three-judge court (J.S. App. No. 75–437, 1a), is reported at 519 F.2d 821.

[1] The Attorney General joins this brief as a party. The Attorney General has also joined as a party in the separate brief for the United States to the extent that brief discusses the law enforcement and interpretive rule-making powers of the Federal Election Commission. The Attorney General is participating as counsel on both this brief and the separate brief for the United States.

[2] Unless otherwise noted, "J.S." refers to the jurisdictional statement in No. 75–436.

JURISDICTION

The judgment of the court of appeals with respect to the whole case (J.S. App. 1582–1586) and the judgment of the three-judge district court with respect to the issues arising under Chapters 95 and 96 of the Internal Revenue Code (J.S. App. No. 75–437, 1a–5a) were both entered on August 15, 1975. Notices of appeal to this Court were filed on August 21, 1975. Probable jurisdiction was noted on October 6, 1975. The jurisdiction of this Court to entertain the appeal from the judgment of the court of appeals rests on 2 U.S.C. 437h(b). The jurisdiction of this Court to entertain the appeal from the judgment of the three-judge district court rests on 26 U.S.C. 9011(b)(2) and 28 U.S.C. 1253. *Civil Service Commission* v. *Letter Carriers,* 413 U.S. 548.[3]

QUESTIONS PRESENTED

In accordance with 2 U.S.C. 437h and the order of the court of appeals (J. App. 74–75), the district court certified 28 constitutional questions to the court of appeals (J.S. App. 1582–1586). The questions before this Court may be summarized as follows:[4]

1. Whether the particular requirements in the challenged statutes providing for recording and disclosure of the source and amount of contributions to candidates for federal elective office and expenditures by or on behalf of such candidates violate the rights of one or more of the plaintiffs under the First, Fourth, or Ninth Amendment or the Due Process Clause of the Fifth Amendment.[5]

2. Whether any statutory limitation, or the particular limitations in the challenged statutes, on the amounts that individuals or organizations may contribute in connection with elections for federal office violate the rights of one or more of the plaintiffs under the First, Fifth, or Ninth Amendment or the Due Process Clause of the Fifth Amendment of the Constitution of the United States.

3. Whether any statutory limitation, or the particular limitations in the challenged statutes, on the amounts that candidates for elected federal office may expend in their campaigns, or on the amounts that may

[3] Because it is not clear whether the reference in 2 U.S.C. 437h to "this Act" includes new Chapters 95 and 96 of the Internal Revenue Code, a three-judge district court was convened to consider the constitutional challenge to these provisions. That procedure seems to be mandated by 26 U.S.C. 9011(b)(2) with respect to Chapter 95. Although there is no comparable provision in Chapter 96 (see 26 U.S.C. 9040–9041), the same course would be required by 28 U.S.C. 2282. Out of abundance of caution, the court of appeals also ruled on the constitutional questions arising under Chapters 95 and 96. Since both courts reached identical results and this Court has jurisdiction on appeal from both judgments, we submit it is unnecessary to decide which court had jurisdiction.

[4] This brief does not address any of the issues arising out of the law enforcement powers of the Commission. With respect to those questions, the Commission is separately represented by Special Counsel, who have filed a further brief on behalf of the Federal Election Commission. The Attorney General has filed a separate brief, which is combined with the *amicus* brief of the United States (see note 1, *supra*), discussing those questions.

[5] Insofar as this question involves a challenge to 2 U.S.C. 437a, that issue has been eliminated by the decision of all defendants not to appeal the ruling below striking down that section as unconstitutional.

be expended by other persons or organizations for their benefit, violate the rights of one or more of the plaintiffs under the First or Ninth Amendment or the Due Process Clause of the Fifth Amendment.

4. Whether any statutory provision for the public financing of political conventions or campaigns for nomination or election to the Presidency or Vice Presidency, or the particular provisions for public financing in the challenged statutes, violates the rights of one or more of the plaintiffs under the First or Ninth Amendment, the Due Process Clause of the Fifth Amendment, or Article I, Section 8, clause 1, of the Constitution of the United States.

STATUTES INVOLVED

The statutes involved are the Federal Election Campaign Act of 1971, P.L. 92–225, 86 Stat. 3, 2 U.S.C. (Supp. III) 431 *et seq.;* Subtitle H of the Internal Revenue Code (Chapters 95 and 96, also known respectively as the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act), P.L. 92–178, 85 Stat. 562, as amended, 26 U.S.C. (Supp. III) 9001 *et seq.;* and the Federal Election Campaign Act Amendments of 1974, P.L. 93–443, 88 Stat. 1263. The full text of those statutes (together with other related provisions not at issue in these proceedings) is reproduced in a government pamphlet entitled "Federal Election Campaign Laws," which is reprinted in Vol. III of the joint appendix.[6]

[6] We note one obvious misprint in the pamphlet: in the fourth line of 26 U.S.C. 9004(a)(2)(B), the word "received" should be substituted for "required" (p. 64).

STATEMENT

A. THE CHALLENGED LEGISLATION

Putting aside provisions concerning the enforcement and interpetive rule-making powers of the Federal Election Commission, the legislation in suit has four principal features: (1) it requires recordkeeping and disclosure of campaign contributions and expenditures; (2) it limits the size of contributions from individuals and groups; (3) it places ceilings on expenditures by, or for the benefit of, candidates for elective federal office; and (4) it provides public financing for Presidential campaigns. We describe each of these aspects briefly, subject to further elaboration of certain points in the Argument.

1. RECORDKEEPING AND DISCLOSURE

The initial requirement is that political committees supporting candidates for federal office record, with the name of the donor, every contribution received in excess of $10 and every expenditure made, regardless of amount. 2 U.S.C. 432(c); see, also, 2 U.S.C. 432(b). Additionally, periodic reports must be filed, directly or indirectly with the Commission, which, among other things, disclose the source of every contribution exceeding $100 and the recipient and purpose of every expenditure over the same amount. 2 U.S.C. 432(f)(2)–(3), 434(a)–(e). That obligation is imposed on individuals as well as committees. 2 U.S.C. 434(e). The last pre-election reports must be complete as of two weeks before the election and must be filed not later than 10 days before the event. 2 U.S.C. 434(a)(1)

(A)(i). But any last-minute contribution of $1,000 or more must be reported within 48 hours. 2 U.S.C. 434 (a)(1). Finally, such reports are promptly made available for public inspection and copying. 2 U.S.C. 438(a)(4).

2. LIMITATIONS ON CONTRIBUTIONS

Contributions are broadly defined to include any gift or loan of money or anything else of value. 18 U.S.C. 591(e). But volunteered personal services are not included (18 U.S.C. 591(e)(5(A)); nor are certain advantages volunteered by a supporter up to a value of $500. 18 U.S.C. 591(e)(5)(B)–(D). The amount of contributions is limited as follows:

(a) A multi-candidate political committee that satisfies certain conditions may contribute up to $5,000 to any single candidate in any given primary or election; there is, however, no limit on the number of candidates who may receive such a contribution from the committee and therefore no total ceiling on the contributions of such a committee. 18 U.S.C. 608(b)(2); see also, 18 U.S.C. 608(b)(5).

(b) Other political committees or groups are limited to $1,000 in contributions per election (or primary) with respect to any particular candidate; but, again, there is no overall limit on contributions. 18 U.S.C. 608(b)(1).

(c) Individuals are likewise restricted to $1,000 per election (or primary) to any particular candidate (*ibid.*); they are, moreover, restricted to an aggregate limit of $25,000 with respect to any election period. 18 U.S.C. 608 (b)(3).

3. EXPENDITURE CEILINGS

The new law imposes limitations on spending in political campaigns. First and foremost, there are ceilings on what the candidate himself (or his principal campaign committee or other authorized representative) may spend. These are:

(a) In the case of a candidate for the Presidency, $10 million in the primary and $20 million in the general election campaign. 18 U.S.C. 608(c)(1)(A)–(B).

(b) In the case of a candidate for the Senate, or for the House of Representatives in a state which is entitled to only one Representative, the greater of $100,000 or 8 cents per voting age resident at the primary and the greater of $150,000 or 12 cents per voting age resident at the general election. 18 U.S.C. 608(c)(1)(C)–(D).

(c) In the case of any other candidate for the House of Representatives, $70,000 at the primary and the same amount at the general election. 18 U.S.C. 608(c)(1)(E).

These ceilings are subject to upward adjustment on two bases. First, up to 20 per cent, the cost of collecting contributions, is exempted from the expenditure limits. 18 U.S.C. 591(f)(4)(H). Second, the ceilings themselves are increased each year to reflect the increased costs of living. 18 U.S.C. 608(d).

There are restrictions on what a candidate may expend from his personal or family funds: $50,000 for a Presidential candidate; $35,000 for a Senatorial candidate or House candidate in a single Rep-

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resentative State; $25,000 for all other House candidates. 18 U.S.C. 608(a).

Ceilings also apply with respect to the expenditures of individuals or groups acting independently and national or State political party committees in support of a candidate—none of which is counted against his allowance. 18 U.S.C. 608(e)–(f). For individuals and groups, the ceiling is $1,000 per candidate per election, with no overall limit. 18 U.S.C. 608(e). For political party committees, the limits are:

> (a) For a Presidential candidate, 2 cents multiplied by the voting age population of the country. 18 U.S.C. 608(f)(2).
>
> (b) For a candidate for the Senate, or for the House in a single Representative State, the greater of $20,000 or 2 cents per voting age resident of the State. 18 U.S.C. 608(f)(3)(A).
>
> (c) For any other House candidate, $10,000. 18 U.S.C. 608(f)(3)(B).

Finally, a ceiling is imposed on party expenditures with respect to Presidential nominating conventions. 26 U.S.C. 9008(d). The limit is $2 million for a "major party" (one whose candidate received 25 percent or more of the votes cast at the previous Presidential election, 26 U.S.C. 9002(6)). 26 U.S.C. 9008 (b)(1) and (d)(1). For a "minor party" (one whose candidate received between 5 and 25 percent of the votes cast at the last election, 26 U.S.C. 9002(7)), the limit is such portion of $2 million as the votes received by that party's candidate at the previous election bear to the average votes received by the

major party candidates at the same previous election. 26 U.S.C. 9008(b)(2) and (d)(2). In "extraordinary and unforeseen circumstances," however, the Federal Election Commission is authorized to increase these ceilings. 26 U.S.C. 9008(d)(3).

4. PUBLIC FINANCING OF PRESIDENTIAL ELECTIONS

The legislation provides that taxpayers may designate $1 of their taxes to be contributed to the Presidential Election Campaign Fund. 26 U.S.C. 6096. Three accounts are established within the Fund, one for Presidential nominating conventions (26 U.S.C. 9008(a)), one to finance the general election campaign of eligible candidates (26 U.S.C. 9006), and one out of which matching payments are made to eligible candidates during the Presidential primaries (26 U.S.C. 9037(g)). Provision is made for an equitable distribution of moneys should the Fund be insufficient to satisfy all claims. 26 U.S.C. 9006(d), 9007(b). In all cases, the subsidy must actually be spent and does not increase the applicable contributions and expenditure ceilings. 26 U.S.C. 9003 (b)–(c), 9004 (b)–(c), 9007(b), 9008(c), 9008(h), 9033(b), 9034(b), 9038(b).

Briefly, the scheme is as follows:

> (a) Any person who seeks nomination as the Presidential candidate of a political party who has received private contributions exceeding $5,000 (counting only the first $250 of each contribution) in each of 20 States is eligible for matching payments to defray his "primary"

campaign expenses. 26 U.S.C. 9033(b). Payments from the Fund match only a maximum of $250 from any private contributor. 26 U.S.C. 9034(a). The total subsidy to any candidate may not exceed $5 million. 26 U.S.C. 9034(b).

(b) The national committee of a political party whose candidate has received at least 5 percent of the votes cast at the previous Presidential election is entitled to public funds to defray the expenses of its Presidential nominating convention, up to the total spending ceilings already noted, *supra*. 26 U.S.C. 9008(b)–(c).

(c) Every candidate of a political party who has qualified for the Presidential ballot in 10 States and who, at the current election or the previous election, or whose party at the previous election, has received 5 percent of the total vote cast, is entitled to public moneys toward his general election campaign expenses. 26 U.S.C. 9002(2)(B), 9004(a).

With respect to the general election, the amount of the payment, subject to the availability of sufficient moneys in the Fund, is $20 million for a major party candidate and such portion thereof for any other eligible candidate as the votes he or his predecessor received represents when measured against the average votes for the major party candidates. 26 U.S.C. 9004(a)(1)–(2). Minor and new party candidates eligible for a grant on the basis of past performance are entitled to a further payment if they achieve a higher vote in the current election. 26 U.S.C. 9004(a)(3). These payments, like those to candidates eligible only

on the basis of current performance, are necessarily made after the election.

B. THE PROCEEDINGS BELOW

These proceedings were begun in the district court on January 2, 1975. The plaintiffs are a United States Senator (James L. Buckley), a former Senator and announced candidate for the Presidency (Eugene J. McCarthy), a Member of the House of Representatives (William A. Steiger), a substantial contributor to candidates for federal elective office (Stewart Rawlings Mott), Senator McCarthy's campaign committee (Committee for a Constitutional Presidency—McCarthy '76), three minor political parties (the Conservative Party of the State of New York, the Mississippi Republican Party, and the Libertarian Party), one chapter of a national civil liberties organization (New York Civil Liberties Union, Inc.), two political action organizations (American Conservative Union and Conservative Victory Fund), and one publication (Human Events, Inc.). All sought to enjoin the implementation of the legislation in suit as unconstitutional. J.S. App. 1508–1509.

Initially, the district judge certified the case to the court of appeals, as required by 2 U.S.C. 437h. J.S. App. 1509–1510. However, on April 14, the court of appeals, sitting *en banc*, remanded the matter to the district court with instructions to develop a record and particularize the constitutional questions presented. J.S. App. 1510, 1587. On remand, the district judge received and adopted certain proposed findings submitted by the parties. J.S. App. 1588. These are

referred to hereinafter as "Findings I, ¶ —," or "Findings II, ¶ —." J. App. 1–698. There were, in addition, a number of depositions and affidavits, which the district court summarized, "Findings III." J. App. 699–753. Finally, the court certified 28 constitutional questions. J. App. 754–760. By memorandum and order of May 19, the case was returned to the court of appeals. J. App. 1.

Pursuant to the order of the court of appeals, a three-judge district court was convened (consisting of District Judge Corcoran and two circuit judges). That court and the court of appeals *en banc,* sitting together, received briefs and heard oral argument. On August 15, 1975, both courts rendered judgments (J.S. App. 1582–1586; J.S. App. No. 75–437, 1a–5a), supported by a lengthy *per curiam* opinion of the court of appeals (J.S. App. 1505–1593), which the district court adopted in relevant part (J.S. App. No. 75–437, 1a). In effect, both courts rejected the challenges to the legislation, except with respect to 2 U.S.C. 437a, which requires disclosure by certain organizations which expend funds or do acts directed to the public for the purpose of influencing the election or advocating election or defeat of candidates, which was declared unconstitutional and its enforcement enjoined. Several questions relating to the composition and powers of the Federal Election Commission were left undecided as "not presently ripe for adjudication" (J.S. App. 1572).[7]

[7] Chief Judge Bazelon dissented only from the majority decision upholding the disclosure requirements as applied to minor parties. J.S. App. 1593–1597. Judge Tamm, joined by Judge Wilkey, would have invalidated the provisions establishing ceilings on contributions and expenditures as well as those providing for public financing of Presidential elections; his opinion also condemns the method of appointment of the Federal Election Commission. J.S. App. 1598–1609. Judge MacKinnon, while otherwise joining in the majority's decision, would have invalidated several provisions relating to the powers and composition of the Commission, most of which the majority of the court of appeals deemed not ripe for adjudication. J.S. App. 1609–1623.

None of the defendants or intervening defendants having appealed from the ruling invalidating 2 U.S.C. 437a, the case is now before this Court on the plaintiffs' appeal from the judgments sustaining the legislation in all other respects.

ARGUMENT

INTRODUCTION AND SUMMARY

1. Several preliminary remarks are appropriate in this unusual case. Appellants' lengthy brief challenges on innumerable grounds the constitutionality of virtually every provision of the Federal Election Campaign Act Amendments. In order to keep our submission within reasonable length, we have focused upon the major issues and have dealt only briefly or not at all with many of appellants' minor points which we deem insubstantial.

To a considerable extent, appellants' arguments are directed to the wisdom of the legislation rather than its constitutionality. Again and again they contend that the statute will not accomplish the objectives that Congress sought to achieve, and that other methods of

dealing with the problem of excessive campaign spending would be preferable. A recurring theme throughout their brief is that disclosure statutes would be more appropriate than the present limitations upon contributions and expenditures, the requirements for record-keeping and disclosure, and the public financing of Presidential elections.

For example, appellants state (Br. 126–127) that "disclosure of large contributions with a potential for influence * * * rather than the restriction of political communication, is the remedy that should be relied upon in a democratic nation which trusts its voters." They also state that "[t]he best solution" to the problem of contributions "is disclosure of large contributions" (Br. 144) and that "appellants believe that narrowly drawn disclosure requirements are the proper solution to virtually all the evils Congress sought to remedy by passing the challenged statutes" (Br. 171).

Appellants' brief thus in large measure consists of policy arguments why Congress should not have enacted this legislation. Many of the arguments have considerable support in the writings of political commentators and experts on government, and presumably they were vigorously and effectively made to Congress when this legislation was under consideration. Congress, however, found the arguments unconvincing, and instead adopted the procedures and techniques contained in the Federal Election Campaign Act Amendments. The constitutionality of those

Amendments is the sole question before the Court, and their validity is not undermined by the fact that there is a substantial body of opinion which believes that Congress should have utilized other methods of dealing with the problem.

The claim is that the legislation is unconstitutional on its face. Many of the specific challenges, however, are based upon speculation about the effects of the statute as applied to various situations which have not occurred and may not arise. Although the implication of First Amendment rights may justify examination of the facial validity of legislation which allegedly has a chilling effect upon the exercise of those rights, not every claim of facial invalidity need be resolved merely because it is made within the rubric of protecting First Amendment rights. "The delicate power of pronouncing an Act of Congress unconstitutional is not to be exercised with reference to hypothetical cases thus imagined" (*United States* v. *Raines,* 362 U.S. 17, 22).

As the court of appeals correctly ruled in this case and as we argue in this brief, many of appellants' attacks upon the constitutionality of the Federal Election Campaign Act are essentially premature. Since it is impossible at this time to predict how the statute will operate in numerous respects when it is actually applied to the nominating and electoral processes, a large part of appellants' constitutional attacks on the legislation is not now meet for judicial resolution.

2. With these introductory comments, we turn to a very abbreviated summary of our submission. It would unduly burden an already long brief to attempt more.

Our discussion begins (Point I, *infra,* pp. 17-37) with a consideration of the objectives which underlay the legislation. We identify three: (1) reducing electoral corruption, in the form of undue influence by financial supporters on candidates; (2) partially restoring public confidence in representative government by allaying popular suspicions that large moneyed interests control too many elected officials; and, finally, (3) increasing democracy in federal elections by widening the meaningful participation of ordinary citizens in electoral campaigns. We conclude that each of these ends is legitimate, indeed compelling. And we submit that they are furthered by the several features of the campaign reform statutes: strict record-keeping and disclosure requirements; limits on money contributions to candidates; ceilings on campaign expeditures, whether made directly by the candidate and his agents or indirectly by others for his benefit; and optional public financing of Presidential primaries, conventions and general elections.

We next examine (Point II, *infra,* pp. 37–69) the First Amendment objections interposed against the legislation. We focus primarily on the two issues that, in our view, are the major First Amendment questions presented: (1) whether the disclosure requirements impermissibly inhibit free association, and (2) whether the expenditure ceilings "cut off" free speech in violation of the Amendment. After full examination of the relevant precedents, we conclude that the impact of the legislation on the exercise of these rights is minimal and that, at all events, the impor-

tance of the governmental objectives (including the promotion of First Amendment values) outweighs any incidental adverse effect on free association and political speech.

Finally (Point III, infra, pp. 69–83), we address the claim that the new law discriminates against challengers and the candidates of minor and new parties. We consider first the effect of the contribution and expenditure ceilings and then the public financing scheme for Presidential elections. In both cases, we show that the attack is speculative in the absence of actual experience under the new provisions. Although the challenged legislation will not eliminate all the present advantages enjoyed by incumbents and by the candidates of established major parties, its probable effect will be to reduce, rather than enhance, those disparities. Accordingly, we conclude that the charge of discrimination is without foundation.

I

THE LEGISLATION IS RESPONSIVE TO LEGITIMATE AND COMPELLING GOVERNMENTAL CONCERNS

The threshold question whenever legislation is challenged on constitutional grounds is always whether, in the words of Chief Justice Marshall, "the end [is] legitimate" and the "means * * * are appropriate * * * [and] plainly adapted to that end." *McCulloch* v. *Maryland,* 4 Wheat. 316, 421. We turn first, therefore, to the congressional objectives and the mechanisms selected to implement them—leaving for later consideration the objection that the means

"are * * * prohibited." *Ibid.* While we do not now address the First Amendment claims, our discussion of the legitimacy of the congressional objectives and the appropriateness of the means selected must take into account that the legislation significantly affects First Amendment interests; we accordingly show that the legislation is responsive to a "compelling" governmental interest. See *United States* v. *O'Brien,* 391 U.S. 367, 376–377.

A. LEGITIMACY OF THE OBJECTIVES

The challenged federal election campaign laws were intended to serve at least three objectives: (1) to lessen the danger of money corruption in electoral campaigns; (2) to restore public confidence in representative government; and (3) to democratize elections by diminishing the power of wealthy interests and encouraging wider citizen participation. Each of these goals is a proper predicate for congressional action and any one is sufficient to justify the legislation. We consider them *seriatim.*

1. Money corruption of candidates and elected officials

The principal, and the most vocalized, objective of the legislation was to remove, or diminish, the risk that certain individuals or groups will "buy" or play an inordinate role in the election of selected candidates for federal office and that, once elected, these officials will be corrupted by a tie with large campaign contributions.

a. That congressional power exists to combat such an evil is not debatable. As long ago as *Ex parte Yarbrough,* 110 U.S. 651, 667, the Court expressly recognized authority to deal with "the free use of money in elections," and that *dictum* was confirmed in *Burroughs and Cannon* v. *United States,* 290 U.S. 534, sustaining the constitutionality of the Federal Corrupt Practices Act of 1925 as applied to Presidential elections. See, also, *Smiley* v. *Holm,* 285 U.S. 355, 366–367; *Roudebush* v. *Hartke,* 405 U.S. 15, 24–25. Whether the power is "implied" or "inherent" in the constitutional scheme, or derives from Article I, Section 4, of the Constitution or from the Necessary and Proper Clause of the Same Article (Section 8, clause 18), may be unclear. Compare *Ex parte Yarbrough, supra,* 110 U.S. at 658, and *Burroughs and Cannon* v. *United States, supra,* 290 U.S. at 545, with *Smiley* v. *Holm, supra,* 285 U.S. at 366–367, and *United States* v. *Classic,* 313 U.S. 299, 314–321. And see *Oregon* v. *Mitchell,* 400 U.S. 112, 119–124 (Opinion of Black, J.). But there is no doubt that Congress may legislate to this end.

Nor can it be disputed that the goal of freeing elections from the corrupting influence of money is not only a legitimate subject of legislation, but a compelling, indeed, a vital governmental concern. The importance of voting, the "fundamental political right, because preservative of all rights" (*Yick Wo* v. *Hopkins,* 118 U.S. 356, 370), has been too often restated by this Court to require elaboration here. See, *e.g., Wes-*

berry v. *Sanders,* 376 U.S. 1, 17; *Reynolds* v. *Sims,* 377 U.S. 533, 562; *Williams* v. *Rhodes,* 393 U.S. 23, 31; *Kramer* v. *Union School District,* 395 U.S. 621, 626; *Lubin* v. *Panish,* 415 U.S. 709, 714. So has the corollary, that there is a compelling governmental interest in keeping elections free from the corrupting influence of "big money." *Ex parte Yarbrough, supra; Smiley* v. *Holm, supra; United States* v. *Auto Workers,* 352 U.S. 567, 570–589.

b. So much is, we assume, unchallenged. But, say the appellants, however legitimate it might be (First Amendment objections aside) for Congress to address such an evil if it were real, there is no present danger of money corruption in federal elections, and, even if there were, the legislation is not appropriate to deal with it.

The assertion that the corrupting influence of wealthy interests is not a real threat to the electoral process and representative government insults the intelligence, and the integrity, of successive Congresses who for three quarters of a century have been wrestling with the problem. That history, which includes statutes enacted in 1907 (34 Stat. 864), 1910 (36 Stat. 822), 1911 (37 Stat. 25), 1925 (43 Stat. 1070), 1940 (54 Stat. 767), 1943 (57 Stat. 163, 167) and 1947 (61 Stat. 136, 159), is fully recited in the opinion below (J.S. App. 1511–1513, 1589–1593) and in *United States* v. *Auto Workers, supra,* 352 U.S. at 570–583. See, also, *United States* v. *C.I.O.,* 335 U.S. 106, 113–115; *Pipefitters* v. *United States,* 407 U.S.

385, 402–412. What is revealed is a continuing legislative concern with "the corroding effect of money employed in elections by aggregated power." *United States* v. *Auto Workers, supra,* 352 U.S. at 582. The Federal Election Campaign Act of 1971 and the 1974 Amendments challenged here represent merely the culmination of that long effort.

Against this background and the ample legislative history recounted in the opinion below and in *Auto Workers, supra,* it would be pointless to indulge in a debate over what informed the congressional mind when it enacted the statutes in suit. It is hardly surprising that the record is not replete with confessions of corrupt influence. There is, however, quite enough to require acceptance of the legislative judgment that, absent regulation, there would be a real risk that large contributions would corrupt both the electoral process and some of our elected officials. See, *e.g.,* H.R. Rep. No. 93–1239, 93d Cong., 2d Sess. 3 (1974); S. Rep. No. 93–689, 93d Cong., 2d Sess. 4 (1974); Findings I, ¶¶ 105, 108, 110–127, 146, 156–165; J. App. 147, 148–156, 203, 253–255. See, also, Findings I, ¶¶ 101–103; J. App. 54–146.

2. Public confidence in elected government

Appellants correctly note (Br. 63) that congressional speakers often expressed a concern about public suspicion of the improper influence of "big money," rather than actual corruption. What is demonstrated, however, is no more than that this was an additional consideration behind the enactment. And that is entirely natural. From the beginning, statutory restric-

tions on the unlimited use of money in political campaigns have responded, in part, to public suspicions and a concern to avoid the appearance of evil. Thus, this Court described the 1907 law banning most corporate political contributions as ultimately provoked by "popular feeling that aggregated capital unduly influenced politics, an influence not stopping short of corruption." *United States* v. *Auto Workers, supra,* 352 U.S. at 570. Surely, no one doubts that the electorate of today shares those views. See Findings I, ¶¶ 133, 144–151, 153–155, 171; J. App. 159–189, 192–209, 214–253, 257.

Nor is there anything improper in legislating to restore public confidence in elected government. On the contrary, that is a wholly legitimate objective, and, indeed, a critical one in times of deep public suspicion and apathy grounded in the citizens' belief that "their" representatives are often "captives" of wealthy special interests. If authority is needed to support so self-evident a proposition, we cite *Civil Service Commission* v. *Letter Carriers,* 413 U.S. 548, 565, expressly invoking congressional concern for appearances in support of the Hatch Act ban on active electioneering by government employees:

> There is another consideration in this judgment: it is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative Government is not to be eroded to a disastrous extent.

3. More democratic elections

Congress was also attempting, by limiting the influence of wealthy supporters, placing a ceiling on expenditures and providing public funds, to democratize federal elections. Fears of corruption aside, the objective was to lessen the disproportionate advantage, the distorting effect, of wealthy special interest groups, and to increase opportunities for meaningful participation by ordinary citizens, as voters, supporters and candidates. Appellants, it seems, both question the propriety of such a goal and doubt whether the legislation will accomplish it.

a. Assuming the congressional objective was not to "freeze" the status quo, but, rather, to open up federal elections to wider participation, is that a legitimate goal? The question would seem to answer itself. Indeed, First Amendment objections aside (see Point II, *infra*), what can be wrong under our constitutional system with an attempt to assure that access to federal elective office is made available to a greater number and the influence of supporters and contributors is made more equal? The consistent jurisprudence of the Court has approved that trend, expressly condemning restrictive rules for political participation that discriminate against the poor. *Lubin* v. *Panish, supra; Bullock* v. *Carter,* 405 U.S. 134; *Harper* v. *Virginia Bd. of Elections,* 383 U.S. 663. See, also, *Cipriano* v. *City of Houma,* 395 U.S. 701; *Phoenix* v. *Kolodziejski,* 399 U.S. 204; *Police Jury of Vermillion* v. *Herbet,* 404 U.S. 807.

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To be sure, as in most things, enlarging the opportunities of the many diminishes the prerogatives of the few. But, in a constitutional system involving the egalitarian principle of "one person, one vote" (*Gray* v. *Sanders*, 372 U.S. 368, 381; *Wesberry* v. *Sanders, supra*, 376 U.S. at 7–8, 18; *Reynolds* v. *Sims, supra*, 377 U.S. at 561–568), that is no objection, so long as no one is excluded from participation. The inflated voice of large contributors, the head-start of wealthy candidates, the entrenched position of the major political parties, are not vested rights which enjoy constitutional immunity from legislative efforts to open the political arena more widely. One might as well argue that it was unconstitutional to deprive those who satisfied property or literacy qualifications for voting of their monopoly when the Constitution itself did not mandate it. Cf. *Oregon* v. *Mitchell, supra*.

At one time it would have been said that there is a difference between withdrawing an "artificial" prerogative or advantage which the state itself has conferred and interfering with the "natural" advantage that wealth carries. But that argument has been foreclosed at least since the 300th volume of the Court's Reports. See, *e.g., West Coast Hotel Co.* v. *Parrish*, 300 U.S. 379; *United States* v. *Darby*, 312 U.S. 100; *Ferguson* v. *Skrupa*, 372 U.S. 726. To paraphrase Mr. Justice Holmes (*Lochner* v. *New York*, 198 U.S. 45, 75), the Constitution does not enact the "*laissez faire*" philosophy that exalts "rugged individualism" and the "free market" over

every other value and forbids all governmental interference to redress gross imbalance or to protect the consumer against deceit. If it were so, the antitrust laws, the pure food and drug laws, the minimum wage laws, the social security laws, the fair employment laws, and a myriad of other regulatory statutes, state and federal, not to mention the progressive income tax, would be invalid.

It will be said that cases dealing with economic regulation have nothing to do with our subject-matter. But that is, at best, only a half-truth. One of the major concerns of the present law is the influence of undue economic power upon the electoral processes. It is not irrelevant that the Court's recitation of the history of restrictions on political contributions by aggregated wealth in *United States* v. *Auto Workers, supra*, 352 U.S. at 570, begins with the antitrust laws and the progressive income tax. There are, to be sure, First Amendment inhibitions here. But, as we shall argue in Point II, *infra*, the Amendment does not preclude government action to deal with the problem that large contributors may be able to monopolize or grossly distort the political process, even absent any danger of actual corruption.

Nor is this a radical new idea. Two decades ago, this Court noted, with apparent approval, that the first federal law restricting campaign contributions (the Act of 1907) was aimed "not merely to prevent the subversion of the integrity of the electoral process" but that its "underlying philosophy was to sustain the active, alert responsibility of the individual

citizen in a democracy for the wise conduct of government." *United States* v. *Auto Workers, supra,* 352 U.S. at 575. See, also, *id.* at 570. Even the staunchest guardians of the First Amendment on this Court have recognized that it may be "an evil for organized groups to have unrestricted freedom to make expenditures for directly and openly publicizing their political views and information supporting them"; such unrestricted freedom is "subject to some curtailment, in the interest of preventing grossly unbalanced presentations." *United States* v. *C.I.O., supra,* 335 U.S. at 145, 146 (Rutledge, J., concurring). More recently, Mr. Chief Justice Warren, Mr. Justice Black and Mr. Justice Douglas have said that "[i]f Congress is of the opinion that large contributions by labor unions to candidates for office and to political parties have had an undue influence upon the conduct of elections, it can prohibit such contributions." *United States* v. *Auto Workers, supra,* 352 U.S. at 598, n. 2 (Douglas, J., dissenting).

The need for regulatory action to ensure that federal elections are not unduly influenced by wealthy interests has increased with the years. With the shift from old-fashioned face-to-face electioneering to radio and television appearances, the extended duration of campaigns, the massively increased size of political organizations, and the spiralling costs of all ingredients of the campaign process, the importance of financial support has multiplied and with it the power of wealthy interests. See Findings I, ¶¶ 12, 88, 89, 93–95, 98, 100; J. App. 9–10, 49–51, 53, 54. Those realities of

today fully justify governmental intervention to preserve democracy in national elections.

B. THE APPROPRIATENESS OF THE MEANS

What has been said sufficiently demonstrates that there were compelling needs that Congress might address. It remains to show that the challenged legislation was in fact tailored to meet those needs.

One can object that, however prevalent is the undue influence—or the appearance of undue influence—of big money in federal elections and however sincere the congressional intention to deal with that problem and to democratize the electoral process, the present legislation is unresponsive to the stated objectives. Indeed, after denying the existence of the evil, appellants say as much.

The claim is extravagant. Of course, one can argue about the particular dollar figures selected to trigger recordkeeping or disclosure requirements or which establish ceilings on contributions or expenditures, and about the specific formulae used to determine eligibility for public funds. But, absent a compelling demonstration that the mechanisms chosen are grossly disproportionate to the problems addressed, it is no part of the judicial function to second-guess the legislative judgment.

In *Burroughs and Cannon* v. *United States, supra,* 290 U.S. at 547–548, the Court said:

> The power of Congress to protect the election of President and Vice President from corruption being clear, the choice of means to that

> end presents a question primarily addressed to the judgment of Congress. If it can be seen that the means adopted are really calculated to attain the end, the degree of their necessity, the extent to which they conduce to the end, the closeness of the relationship between the means adopted and the end to be attained, are matters for congressional determination alone.

It may be that the test is somewhat stricter today, especially in the face of a First Amendment challenge. But no decision of this Court remotely suggests that constitutionality depends on a perfect scheme or a choice of what judges believe would be the best formula. On the contrary, in sustaining the Hatch Act, the Court only recently rejected the argument that Congress should have selected a different remedy in these words (*Civil Service Commission* v. *Letter Carriers, supra,* 413 U.S. at 567):

> Perhaps Congress at some time will come to a different view of the realities of political life and Government service; but that is its current view of the matter, and we are not now in any position to dispute it.

Congress was not writing on a clean slate. As we have noted, for almost three-quarters of a century there had been piecemeal efforts to deal with the problem of the undue influence of money in federal elections. But, as the court of appeals remarked (J.S. App. 1512), "[t]he achievements of the statutes were overmatched by what proved to be wholesale circumvention." "[T]he failure of piecemeal regulations to preserve the integrity of federal elections" (J.S. App.

1593)—a fact hardly debatable in view of what the court below characterized as "[t]he excesses revealed by this record" (J.S. App. 1581)—prompted Congress to act more vigorously and more comprehensively. That is, of course, a relevant consideration in assessing the appropriateness of the means now selected, each feature of which must be seen as an integral part of a comprehensive attempt, after long forbearance, to correct a perceived blight on our democratic processes. Cf. *South Carolina* v. *Katzenbach,* 383 U.S. 301, 308–315, 328, 337.

With this preface, we turn to the legislation to describe how its several features are calculated to contribute to the announced goals—reserving for later discussion specific constitutional objections to particular provisions.

1. Recordkeeping and disclosure requirements

The virtue of public disclosure in this area is too obvious to require extended discussion. Indeed, appellants do not challenge the requirement that campaign expenditures be disclosed (see Br. 170). They do, however, object to compulsory disclosure of all contributions over $100. Yet, that has been a requirement of federal law since 1910. See *United States* v. *Auto Workers, supra,* 352 U.S. at 575–576. The importance of such a rule to deter corrupt givers and discourage receivers from being corrupted by contributions is self-evident. As this Court concluded with respect to the like requirement in the Federal Corrupt Practices Act of 1925, "[t]he verity of this con-

clusion reasonably cannot be denied." *Burroughs and Cannon* v. *United States, supra,* 290 U.S. at 548.

Nor is that all. Fears of an improper tie between contributor and candidate aside, disclosure serves an informing function: the knowledge of who is backing which candidate aids the voter in appraising the contestants and determining what each really stands for.

a. The suggestion that only successful candidates be required to disclose their contributions (Appellants' Br. n. 8, p. 182) ignores the importance of the "bought" or "stalking horse" candidate who, though unsuccessful, may deflect votes from others whom the electorate might prefer if they knew the facts. Wisely, the law requires disclosure in primaries as well as general elections, and before the voting day. See 2 U.S.C. 434(a)(1)(A)(i); 2 U.S.C. 434(e). Drawing on the analogy the Court itself made in *United States* v. *Harriss,* 347 U.S. 612, 625, it is important "to maintain the integrity of a basic governmental process" that the voters know, with respect to every candidate, "who is putting up the money, and how much," so that they may better evaluate him.

These considerations apply to all candidates—successful or unsuccessful—including those that are entirely legitimate. As the court of appeals noted, commenting on the "angels" who often support minor party candidates, "the voting population has an interest in knowing the composition of the angels' wings and what makes them fly." J.S. App. 1545, n. 114. Not surprisingly, besides the Congress, the legislatures of 34 States have also reached that conclusion and require disclosure of campaign contributions. See *Developments in the Law—Elections,* 88 Harv. L. Rev. 1111, 1241–1242 (1975).

b. Appellants' further objection that the $100 limit for undisclosed contributions is unrealistically low (Br. 170, 174–175, 184–189) invites impermissible speculation. See *United States* v. *Finance Committee to Re-elect President,* 507 F. 2d 1194, 1200 (C.A.D.C.). It is the same ceiling selected by Congress in the 1925 Federal Corrupt Practices Act[8] and the Federal Election Campaign Act of 1971 and equal to or greater than that adopted by some 20 States. See *Developments in the Law—Elections, supra,* 88 Harv. L. Rev. at 1241–1242. A $100 contribution may well be sufficient to "attract the attention of the candidate." *Stoner* v. *Fortson,* 379 F. Supp. 704, 713 (N.D. Ga.). At all events, the $100 level serves to uncover the common situation in which many people associated with a single enterprise, or occupation, pool their contributions to make an impact.

c. Like considerations underlie the requirement that contributions exceeding $10 be recorded with the name of the donor. If this were not done, it would be possible to evade the disclosure requirement—and, indeed, the maximum contribution limitation—by successively contributing many small unidentified amounts.

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[8] In the 1910 statute reporting was required of contributions which aggregated $50 per year. See *United States* v. *Auto Workers, supra,* 352 U.S. at 575–576.

2. Ceiling on contributions

Despite their challenge to disclosure of any or most contributions, appellants argue (Br. 117–118, 126–127) that disclosure is the only appropriate remedy for corruption through large donations. That is, however, an overly optimistic, if not naive, notion. It contradicts the consistent congressional judgment since the turn of the century that disclosure, alone, cannot deter the improper influence of aggregated wealth. Beginning with the outright ban on corporate campaign contributions in 1907, there have been repeated attempts to limit the size of contributions or the total expenditure of candidates, or both. Unfortunately, prior statutes contained so many loopholes that they had little effect. See Findings I, ¶¶ 130, 131, 137, 139–145; J. App. 156–158, 190–203. And so, in the light of recent experience, Congress determined to deal with the problem more comprehensively.

a. Setting a ceiling on contributions from any single source is the most direct way of preventing the risk of electoral corruption by big money. The objection cannot be that such an approach is ineffective: the argument must be that the weapon is unnecessarily lethal. But is it?

If the object is to reduce the risk that candidates, successful and unsuccessful, will be too closely tied—or appear to be—to large moneyed interests, how else is that goal to be accomplished? Certainly, the prospect of exposure will often deter the corrupt transaction and exposure after the fact may appreciably

weaken a corrupt link. As we have seen, those are good reasons for disclosure provisions. But experience convinced Congress that publicity is not a cure-all. Too often, revelations of undue influence by rich sponsors are simply shrugged off or produce a cynical indifference in a citizenry that despairs of reforming its politicians. What is more, reporting laws are not always obeyed. The risk of corruption is manifestly reduced when both parties, contributor and recipient, are subject to criminal penalty for exceeding the limitation.

There is, of course, a more radical alternative: exclusive public financing of political campaigns for federal office. Indeed, the optional scheme of the present law, as we shall see, serves that end by freeing Presidential candidates from total dependence on private contributions. But, unless public financing is combined with a prohibition, or a limitation, on private financing of campaigns, it cannot eliminate the temptation of wealthy interests to finance candidates who they believe will be sympathetic to their interests and perhaps provide reciprocal favors. Appellants cannot have it both ways: so long as private contributions toward the election of federal officials are permitted, it is necessary to restrict the amount from any single source.

b. What is more, ceilings on contributions importantly serve the distinct objective of widening active participation in the electoral process. They operate in several ways to make elections more democratic. The

candidate, no longer able to rely on a few wealthy supporters, must now invite the ordinary citizen to take an active part in the campaign. The citizen, now assured that every candidate is anxious for his help, will be more inclined to take a real interest, selecting more carefully and contributing more freely, in the knowledge that his support matters. And, finally, eliminating the huge advantage of those who could depend on an established list of large contributors will allow new challengers to enter the lists with a fair chance of successfully appealing to the electorate at large.

c. Once the principle of limiting the size of campaign contributions is conceded, the task is to devise rules which are fair and effective. That is the special achievement of the present legislation, which plugged most of the notorious loopholes of prior law. See Findings I, ¶ 137; J. App. 190. Now a ceiling of $1,000 is placed on individual contributions to, or earmarked for, a single candidate, 18 U.S.C. 608(b)(1), (4)(A) and (6), and an overall contribution limit of $25,000 is imposed with respect to any election period. 18 U.S.C. 608(b)(3). These provisions, combined with the $5,000 ceiling on contributions to a particular candidate by subsidiary political committees, 18 U.S.C. 608(b)(2), and the broad definition of what constitutes a contribution, 18 U.S.C. 591(e), are carefully designed to prevent, so far as possible, any undue financial link between candidate and contributors. Each of these ceilings complements the others and each is necessary to implement the objective.

3. Ceiling on expenditures

a. One provision of the new law, the $1,000 limitation on independent expenditures in support of a particular candidate, 18 U.S.C. 608(e), has attracted special criticism. Yet, it is a necessary ceiling if the restriction on large contributions is not to be evaded. Indeed, but for such a provision an individual or organization could massively support a favored candidate by spending directly on his behalf, rather than giving a money contribution to the candidate for him to spend. Cf. *United States* v. *C.I.O., supra,* 335 U.S. at 115; *United States* v. *Auto Workers, supra,* 352 U.S. at 579–587. And see Findings I, ¶ 136; J. App. 190.

A different approach to the problem was attempted in the Federal Election Campaign Act of 1971. See *American Civil Liberties Union* v. *Jennings,* 366 F. Supp. 1041 (D. D.C.), vacated as moot *sub nom. Staats* v. *American Civil Liberties Union,* 422 U.S. 1030. The new law has avoided the charge of "censorship" levelled at the repealed provision. Publications and broadcasters are no longer required to obtain the candidate's agreement to have the cost of a "commercial" counted against his expenditure limit: under present law, the sponsor's expenditure, though limited, is subject to no veto and the candidate is not penalized. One can readily appreciate the congressional preference for the present solution. But some restriction on independent campaign expenditures in support of a particular candidate is necessary if the limitations on campaign contributions are to work.

b. The rationale of the other ceilings on campaign expenditures is perhaps less self-evident. It is arguable that the risk of undue influence by aggregated wealth is fully met by ceilings on contributions and independent expenditures. The fact, however, is that when campaign spending is unlimited, the pressures for filling the void with large donations becomes irresistible.

The expenditure ceilings importantly contribute to lessening the opportunities and the temptations for money corruption. That has been the congressional judgment since 1911.

c. What is more, limiting the amount each candidate may spend tends to curb the exaggerated role of money in our elections. It also is likely to encourage participation as candidates by many who in the past remained inactive on the ground that, inevitably, they could not compete against the established fund-raiser. The limit placed on a candidate's expenditure from his personal or family funds (18 U.S.C. 608(a)) contributes to the same end, by decreasing the advantage a wealthy candidate would otherwise enjoy—especially under a regime of strict contribution ceilings—and thereby widening the opportunities for successful candidacy. The combined effect of these provisions also must be substantially to democratize federal elections.

4. Public financing of Presidential elections

Many of the foregoing considerations support the provision of public funds—within the ceilings already established—in Presidential elections. We need not

belabor the point that the availability of public money lessens the candidate's dependence on contributions from wealthy groups and individuals. To be sure, federal funds are not given to a candidate who does not prove himself a serious contender. We later discuss the claim that the scheme is discriminatory. But, for present purposes, it is enough that the public funding provisions obviously further the objective of diminishing the danger of corruption through dependence on large campaign contributions, and, equally important, they widen the opportunities of ordinary citizens to participate actively in electoral campaigns, both as candidates and as supporters.

II

THE LEGISLATION DOES NOT IMPERMISSIBLY TRENCH ON FIRST AMENDMENT RIGHTS

We have shown that the challenged legislation responds to legitimate and compelling governmental concerns and that it implements powers reserved to the national Congress by the Constitution. That would be the end of the inquiry were it not for the claim that the new law impermissibly discriminates (see Point III, *infra*) and trenches on First Amendment rights. We now discuss the latter objection.

A. THE DISCLOSURE REQUIREMENTS

We have already discussed the compelling objectives served by disclosure of political contributions and expenditures, and explained why it is necessary

to fix the disclosure limit low and to insist that contributions be revealed by all candidates before the voting occurs (*supra,* pp. 29–31). We now discuss the arguments that the disclosure requirements violate the First Amendment.

While the arguments overlap, it will be useful to distinguish two propositions: (1) the claim that individuals have an unconditional right to anonymous speech, regardless of any association with others for a common purpose; and (2) the distinct claim of associational privacy, independent of any connection with speaking or writing. The first argument primarily rests on *Talley* v. *California,* 362 U.S. 60; the second largely relies on the N.A.A.C.P. cases, *N.A.A.C.P.* v. *Alabama,* 357 U.S. 449; *Bates* v. *Little Rock,* 361 U.S. 516; *Shelton* v. *Tucker,* 364 U.S. 479; *Louisiana* v. *N.A.A.C.P.,* 366 U.S. 293; *N.A.A.C.P.* v. *Button,* 371 U.S. 415; *Gibson* v. *Florida Legislative Comm.,* 372 U.S. 539. We deal with the claims in that order.

1. The right to speak or write anonymously

a. It is far from clear how the right to speak freely came to include a right to speak anonymously. As Mr. Justice Clark has noted, "[t]he Constitution says nothing about freedom of anonymous speech." *Talley* v. *California, supra,* 362 U.S. at 70 (dissenting opinion). Presumably, the only rationale for recognizing such a right is a concern that requiring disclosure of the true identity of the speaker or writer may expose him to reprisal and thereby deter him from expressing

his views. But one may well question whether that consideration justifies First Amendment insulation for all speech which is unlabelled or mislabelled as to source, regardless of any showing that the author is truly in danger of retaliation. As Mr. Justice Black himself wrote in support of a requirement that foreign agents disclose their political propaganda activities (*Viereck* v. *United States,* 318 U.S. 236, 251 (dissenting opinion)):

> Resting on the fundamental constitutional principle that our people, adequately informed, may be trusted to distinguish between the true and the false, the bill is intended to label information of foreign origin so that hearers and readers may not be deceived by the belief that the information comes from a disinterested source. Such legislation implements rather than detracts from the prized freedoms guaranteed by the First Amendment.

That has been the predominant view: absent very unusual circumstances, a mere requirement that the speaker or sponsor be identified has been sustained, whether its purpose was to inform the readers of a newspaper (*Lewis Publishing Co.* v. *Morgan,* 229 U.S. 288), local governmental authorities (*New York ex rel. Bryant* v. *Zimmerman,* 278 U.S. 63), the voters (*Buroughs and Cannon* v. *United States, supra*), the Members of Congress (*United States* v. *Harriss, supra*), or the public at large (*Communist Party* v. *Control Board,* 367 U.S. 1). See, also, *Rabinowitz* v. *Kennedy,* 376 U.S. 605. That principle is the predicate of many State and federal statutes (see *Communist*

Party v. *Control Board, supra,* 367 U.S. at 97–101), including provisions in the United States Code (18 U.S.C. 612 and 47 U.S.C. 317) and in the laws of 43 States (see *Developments in the Law—Elections, supra,* 88 Harv. L. Rev. at 1286–1287, and *Talley* v. *California, supra,* 362 U.S. at 70, n. 2 (Clark, J., dissenting)) requiring disclosure of the sponsors of political campaign literature.

b. Against all this, appellants invoke (Br. 190–191) this Court's decision in *Talley* v. *California, supra,* striking down a city ordinance that banned the distribution of anonymous handbills as violating the First Amendment. Because that ruling, at first blush, seems at odds with all that went before, we must consider it with special care.

Some passages of the *Talley* opinion do, indeed, suggest an absolute and wholly individual right of anonymous speech. But that is not the actual holding of the case, which involved an ordinance prohibiting "all handbills under all circumstances anywhere that do not have the names and addresses printed on them." 362 U.S. at 64. Indeed, the Court's opinion expressly reserved the question of "the validity of an ordinance limited to prevent [fraud, false advertising and libel] or any other supposed evils." *Ibid.* See, also, 362 U.S. at 66–67 (Harlan, J., concurring). And, in citing *Talley* in later cases, the Court has characterized it as condemning a regulation of speech that was "overbroad" in that it swept unnecessarily widely to deal with the particular problem addressed. See, *e.g., Shelton* v. *Tucker, supra,* 364 U.S. at 489.

In sum, what *Talley* establishes is this, and nothing more: that the First Amendment protects anonymous writings against governmental insistence on disclosure when the purpose is insufficiently important or the means are not carefully tailored to achieve only legitimate purposes.

At all events, the proposition that anonymity is an absolute right is foreclosed by later decisions of the Court. We need only cite *Communist Party* v. *Control Board, supra,* and *Branzburg* v. *Hayes,* 408 U.S. 665. See, also, *United States* v. *Nixon,* 418 U.S. 683; *Procunier* v. *Martinez,* 416 U.S. 396, 413–414. Nor is there any basis in the Court's cases for a claim that anonymous political speech in particular enjoys First Amendment immunity. On the contrary, the Court has been reluctant to apply *Talley* so as to condemn laws which require the sponsors of campaign literature to reveal themselves. See *Golden* v. *Zwickler,* 394 U.S. 103; cf. *Hill* v. *Printing Industries of the Gulf Coast,* No. 74–456, decided June 30, 1975. That hesitation presumably reflects recognition of the unusually compelling interest in assuring that voters know who is backing which candidate—so that they may better appraise the candidate and not be misled by a false assumption as to the interests he represents.

c. But the present case does not even involve a requirement that all who speak or write in support of a particular candidate identify themselves. Because the focus of the challenged legislation is the undue influence of money, disclosure is confined to paid com-

mercials. What is more, the Federal Election Campaign Act imposes no immediate identification requirement with respect to spoken or written advertisements. No doubt, in some instances it will be possible to determine from the reports on expenditures filed after the fact what group or individual sponsored a particular commercial. But, even then, all that can be discovered is the identity of the payor, normally the candidate himself or his campaign committee. This is a much lesser interference with anonymous speech than a contemporaneous labelling requirement.

To be sure, disclosure of the identity of contributors to a particular candidate connects them indirectly with his campaign speeches and commercials. But the link is far too tenuous to justify any claim that the contributor's speech is involved.

The upshot is that the challenged law only remotely and incidentally affects anonymous speech. Its objective is not to prevent pseudonymous political writing. Indeed, nothing in the new legislation would require the authors of a modern series of *Federalist Papers* to reveal their identities. What is aimed at is secret money, not anonymous writing. The law is narrowly drawn to accomplish that objective. In those circumstances, it is not a sound objection that, unavoidably, there is an incidental, albeit very limited, effect on anonymity.

2. The right of associational privacy

Appellants also charge (Br. 171–184) that the challenged legislation, by requiring disclosure of political contributions and expenditures, impinges on the

right of free association. The First Amendment protects political association as an aspect of freedom of assembly—whether or not speech, spoken or written, is directly involved. See *Cousins* v. *Wigoda,* 419 U.S. 477, 487–488, and cases there cited. Not only flat prohibitions on such association, but also "significant encroachment[s]," implicate the First Amendment and will not be sustained if there is "a less drastic way of satisfying * * * legitimate [governmental] interests." *Kusper* v. *Pontikes,* 414 U.S. 51, 58–59. Our submission is that the present law has no such "significant" effect and that, if it does, compelling needs justify that incidental consequence.

a. The Court has never suggested that secret membership in any organization is always an absolute constitutional right. On the contrary, in *Communist Party* v. *Control Board, supra,* compelled disclosure of membership was upheld, and no Member of the Court in dissent objected to the requirement that the Party register and list its members if membership were neither stigmatized nor made potentially criminal. See 367 U.S. at 136–137 (Warren, C.J., dissenting), 138 (Black, J., dissenting), 190 (Douglas, J., dissenting), 191 (Brennan, J., joined by Warren, C.J., dissenting). Nor has the Court ever held that compelled disclosure of membership is always, or usually, an "encroachment" on freedom of association which calls for special justification. Indeed, the decisions suggest the opposite: that the First Amendment shields secret membership only when there is a real danger of exposure to reprisal. See *N.A.A.C.P.* v. *Ala-*

bama, supra, 357 U.S. at 462–463; *Bates* v. *Little Rock, supra,* 361 U.S. at 523–524; *N.A.A.C.P.* v. *Button, supra,* 371 U.S. at 435–436; *Gibson* v. *Florida Legislative Comm., supra,* 372 U.S. at 556–557.

b. But, even assuming that all restrictions on privacy of association implicate the First Amendment, sufficiently compelling governmental interests will vindicate some intrusions. The test of constitutionality must take into account both the importance of the legislative objective and the degree of the invasion of privacy, bearing in mind that only the least intrusion necessary to accomplish a legitimate end is permissible. We consider the challenged legislation in that light.

We have already noted the important congressional concerns which underlie the disclosure requirements of the Federal Election Campaign Act Amendments and the care taken to select mechanisms that would be effective without sweeping too broadly. See *supra,* pp. 29–31, 41–42. It remains only to emphasize how little these provisions trench on associational rights.

First, anonymous membership in groups, even purely political associations, is not prevented. The challenged law requires no one to say (or have said about him) whether he belongs to the Republican Party, the Democratic Party, the Conservative Party, the Progressive Party, or indeed, the Communist Party. Compare *Sweezy* v. *New Hampshire,* 354 U.S. 234. Indeed, so long as membership involves no greater annual contribution than $100, it may remain secret, whatever the organization. That is because the Campaign Act is concerned with money, not membership.

But it does not follow that by contributing more than $100 to an organization, the donor exposes his membership. The law reaches only contributions "made for the purpose of influencing the nomination for election, or election, of any person to Federal office * * *." 2 U.S.C. 431(e)(1)(A). Obviously excluded are gifts, dues or subscriptions paid to non-political associations, as well as to non-partisan political organizations. What is more, contributions to less neutral political groups need be disclosed only if they are earmarked (expressly or impliedly) for one or more specific candidates. The challenged statute exposes only contributions which the giver intends shall be used for a particular candidate or slate of candidates.[9]

A disclosure requirement so confined has only a marginal effect on membership in existing organizations and associations. While it is arguable that those who support a particular candidate are thereby joining in a new "association," that is a strained concept. Especially when contributions are limited as to amount and the number of givers is increased, it is almost as unreal to characterize all contributors, for the most part unknown to each other and in no way organized together, as an "asociation" as it would

[9] The Commission has rendered an interim ruling that contributions to an established political party which intends to field candidates in the upcoming election are subject to the limitations, even though the identity of those candidates is not yet determined. FEC AO 1975–4, in 40 Fed. Reg. 29793–29794.

so view those who eventually vote for the candidate.

Nor is the relationship between most contributors and the candidate, although more meaningful than the abstract link among contributors themselves, the kind of association traditionally embraced by the constitutional concept of "free association." Although the candidate will have his close campaign associates who may also be contributors, their identity is no secret and their direct association with the candidate will not be affected by a disclosure requirement. So, also, large contributions may create a close tie, corrupt or otherwise, between giver and receiver; but that special relationship, based on financial dependence, is now eliminated. The bulk of supporters, on the other hand, will have no real contact with their candidate, and he himself will not even know their names. It does not deprecate the practical importance of mass support, or the national interest in more democratic electoral campaigns, to recognize that the "association" between the individual supporter and the candidate is very distant kin to the right of assembly which the First Amendment protects.

c. But, even viewing the supporter's choice of a particular candidate as in some sense an exercise of the right of free association, the challenged law creates only the mildest deterrent, if any, to that exercise. In the climate of today, in which extreme views are regularly uttered, without restraint, it is doubtful that many are significantly discouraged from contributing because the gift may become known. What

is more, disclosure is not contemporaneous with the gift, and it will be a rare case where an individual contribution of $1,000 or less will be deemed worth reporting by the press.

There is no substantial showing that the limited disclosure requirements of the challenged statute will deter any speech or any association. The court of appeals correctly characterized the evidence on this score as "scant," "skimpy" and "thin." J.S. App. 1546 and n. 115. The truth of the matter is that the disclosure provisions of the new law touch only tangentially upon contributors' rights of free speech or free association. At all events, the intrusion is so slight that it provides no basis for invalidating an important part of the regulatory scheme.

B. CEILINGS ON EXPENDITURES

Appellants contend (Br. 79, 107) that the expenditure ceilings are particularly offensive to the First Amendment because they directly and intentionally "cut off" speech, "flatly prohibiting" further speech after the allowance is spent. We examine that charge, first in its most extreme form: that any spending limit is unconstitutional. We then consider the particular expenditure ceilings the Act imposes.

1. The principle of spending ceilings

a. We cannot too often stress that the legislation in suit is concerned with *money,* not speech. That is not the same thing, even today. Many campaign expenditures are unrelated to speech and there are still ways of communicating that do not involve spending.

But, more important, what is regulated is one of the means for communication, not speech itself. There is no censorship whatever: the candidate and his supporters may say what they like. What is more, they remain entirely free to choose their medium of communication. The law does not limit the total number of hours a candidate can speak or the number of words that can be written on his behalf. The evil aimed at is not prolixity, but the undue influence and the gross disparities resulting from unlimited spending in electoral campaigns.

b. So saying, we do not blink the fact that the effect of spending limits—at least limits low enough to have a bite—must be to restrict some political speech. But is that enough to invalidate the law? Let us examine a few hypothetical examples.

Consider a regulation that restricts speakers in a public park to a single "Speaker's Corner" and then, in the interest of fair access, limits any single speaker to one two-hour speech a week. The soap-box orator who has more to say is literally "cut-off" and, we may assume, has no practical alternative forum. Is such a reasonable rule good only for Hyde Park in London but not for Lafayette Park in Washington? And what of a regulation that bans door-to-door canvassing after midnight or electioneering at the polls? Is it permissible to close courthouses and government offices to political campaigning?

The answer has long since been given. As the Court recently summarized its prior holdings, "reasonable 'time, place and manner' regulations may be necessary to further significant governmental interests, and are permitted." *Grayned* v. *City of Rockford,*

408 U.S. 104, 115 and cases cited at n. 30. Of course, speech cannot be wholly suppressed in the guise of "regulation." But, almost necessarily, every restriction of time and place in a finite world imposes a quantitative limitation, it "cuts off" some speech. Given a sufficient governmental interest, such a neutral (as to the content of speech) restriction does not violate the First Amendment.

c. Appellants repeatedly cite (*i.e.,* Br. 47, 53, 81, 83, 109, 119, 141) *Mills* v. *Alabama,* 384 U.S. 214, which invalidated a state law as applied to a newspaper editor who was prevented from publishing on election day an editorial urging voters to cast their ballots in a particular way. As with *Talley* v. *California, supra,* the opinion perhaps sweeps more broadly than the holding and we must examine the case with some care.

Mills can be read as saying that "no test of reasonableness" can justify a curb on press freedom. 384 U.S. at 220. No such ruling was necessary to the result, since the Court also found a "fatal flaw" in the justification tendered by the State (*ibid.*): a sufficient ground for reversal was that the statute was "wholly ineffective" in accomplishing its alleged objective.

In any event, the statement in *Mills* does not control here. The Federal Election Campaign Act—unlike the Alabama statute—in no way restricts the freedom of "a newspaper editor to * * * urge people to vote one way or another in a publicly held election." *Ibid.* As we have already noted (*supra,* pp. 47–48), our case has nothing to do with freedom of the press, which is left wholly unfettered.

Under *New York Times Co.* v. *Sullivan,* 376 U.S.

254, 266, and *Bigelow* v. *Virginia,* No. 73-1309, decided June 16, 1975, slip op., pp. 8–16, a paid editorial or, indeed, any advertisement containing information of "public interest" published in a newspaper enjoys the same protection as the editor's own views printed on the editorial page. But nothing in *Sullivan* or *Bigelow,* or in any other case, suggests that a restriction imposed on the sponsor of an advertisement, before publication, must be judged by the same standard that governs attempted regulation of the editor's freedom to print what he chooses. On the contrary, the Court has consistently viewed the press as occupying a particularly protected position under the First Amendment. See, *e.g., Miami Herald Publishing Co.* v. *Tornillo,* 418 U.S. 241; *New York Times Co.* v. *United States,* 403 U.S. 713; *Pittsburgh Press Co.* v. *Human Rel. Comm'n,* 413 U.S. 376, 381–382, 391. Indeed, Madison's original draft of the First Amendment singled out freedom of the press as alone "inviolable." See *New York Times Co.* v. *United States, supra,* 403 U.S. at 716 (Black, J., concurring).

The sponsor of a paid political message (whether candidate or independent supporter) can be denied all access to the medium of his choice, not only by private editors, *Columbia Broadcasting* v. *Democratic Comm.,* 412 U.S. 94; *Miami Herald Publishing Co.* v. *Tornillo, supra,* but, at least in some circumstances, by government itself, *Lehman* v. *City of Shaker Heights,* 418 U.S. 298; 47 U.S.C. (Supp. III) 399(a). Cf. *Nat. Broadcasting Co.* v. *United States,* 319 U.S. 190, 226–227. Other would-be sponsors of a partisan political message are wholly excluded by law from every public forum. *Civil Service Commission* v. *Letter Carriers,*

supra; Broadrick v. *Oklahoma,* 413 U.S. 601. Similarly, although the press ordinarily cannot be stopped from publishing information which prejudices a criminal trial, the "sources" of that information can be enjoined from supplying it. *Sheppard* v. *Maxwell,* 384 U.S. 333, 359, 361–363. And it would seem that in some circumstances even a United States Senator can be enjoined from delivering material to a private publisher that the latter probably could not be prevented from printing. Compare *Gravel* v. *United States,* 408 U.S. 606, with *New York Times Co.* v. *United States, supra.* See, also, *Kleindienst* v. *Mandel,* 408 U.S. 753.

The most recent, and the clearest, statement of the principle appears in *Bigelow* v. *Virginia, supra.* In condemning the application to a newspaper editor of a State statute prohibiting the publication of an advertisement encouraging abortion, the Court expressly noted (slip op. at 18):

> The strength of appellant's interest was augmented by the fact that the statute was applied against him as publisher and editor of a newspaper, not against the advertiser or a referral agency or a practitioner. The prosecution thus incurred more serious First Amendment overtones.

d. We have already discussed the important concerns that underlie both the overall limitation on campaign spending and the ceiling on "unauthorized" or "independent" expenditures in support of a particular candidate (*supra,* pp. 35–36). Those reasons, we submit, are sufficient to support the indirect restraint on speech which the spending limitations impose. Unlike the situation in *Sullivan* and *Bigelow,* where the applicability of the restriction on speech depended on

the content of the message being delivered, the Act's restrictions apply neutrally to all excessive campaign expenditures (regardless of the particular message they seek to support and whether that message is critical or laudatory of any individual). No message is prohibited because of its content; all persons are free under the Act to say what they wish, within the limits of the Act's monetary ceilings. The Act's restrictions thus are more akin to limitations on the time, place, and manner of speech (already discussed) or to the similarly neutral regulation applied under the "fairness doctrine" to the broadcast media. See *Red Lion Broadcasting Co.* v. *Federal Communications Commission,* 395 U.S. 367. With these general considerations in mind, we now turn to examine the particular limitations in the light of the First Amendment.

2. Overall limitations on candidate expenditures

Having shown that the First Amendment does not bar all limitations on campaign spending, we now consider the overall limitations imposed on a candidate's campaign expenditures (18 U.S.C. 608(c)), the limitation on his personal contribution to that total (18 U.S.C. 608(a)), and the limitation on additional expenditures on behalf of a candidate by official political party committees (18 U.S.C. 608(f)).

Each of these provisions represents an accommodation between two competing sets of considerations. On the one hand, the ceilings serve the objective of reducing the undue influence of money in elections and preventing the exaggerated advantage that great wealth—whether of the candidate, his party or his supporters—

presently enjoys. On the other hand, they recognize the importance of allowing as much freedom as possible within the boundaries of effective regulation and respect the reality that political campaigns cost money and that the ability to raise funds is, in an important degree, a reflection of the candidate's public appeal (when individual and group contributions are severely limited). We submit that in these provisions Congress struck a reasonable and justifiable balance which the courts should accept.

We do not claim that each of the ceilings is fixed at the only defensible level. Indeed, experience may suggest alteration of one limitation or another, or even an entirely new formula. But the Constitution does not require perfection at the very inception of an experiment. It is enough, at this stage, to know that the law does not intentionally discriminate (see Point III, *infra*) and does not shackle the existing electoral system.

We stress two aspects. The first is that the expenditure limitations are deliberately devised to avoid destroying the party system. That is accomplished by allowing national and state committees to make expenditures which are not counted against the candidate's allowance. Of course, it was necessary to impose a limit on those party expenditures in support of a particular candidate, but the ceilings are not niggardly.

The other significant feature of the system is the ample allowance fixed for spending by the candidate (or his campaign committee). An important aim of the ceilings is to curb the continuously upward spiralling cost of campaigns—which, experience

teaches, is inevitable when the sky is the limit—and the candidates' consequent dependence on wealthy interests and practical elimination of the financially-disadvantaged candidate. But the fact is that, in the most recent elections, the overwhelming majority of candidates for the House of Representatives and the Senate did not spend more than the amounts now allowed. See Findings IIA, ¶¶ 18–19, 28–29, 40–41, 47–48; J. App. 442–443, 445, 448–449, 450. Every indication thus is that the present limits will cut off no debate.

3. The ceiling on independent expenditures

Given the twin premises that there must be an overall ceiling on what a candidate may spend to win election and that there must be a limit on what any individual or group may contribute to that end, the question Congress faced was how to avoid circumvention of these ceilings by those who decide to help the candidate by directly spending on his behalf—whether by sponsoring printed or broadcasted commercials or otherwise.

The problem is a difficult one. There is a triple dilemma: if the candidate is allowed to screen the material he deems worthwhile because the expenditure consumes a portion of his allowance, independent supporters are subjected to censorship; if, on the other hand, the candidate has no veto and unauthorized commercials are counted against his expenditure ceiling, he may lose control of his own election campaign; and, finally, if independent expenditures are unlimited and unaccounted, the spending and giving limitations are seriously compromised.

There is no perfect solution. But, on balance, Congress has chosen a realistic compromise which, while effective, trenches least on First Amendment values. The scheme embodied in 18 U.S.C. 608(e) allows, but limits, "independent" or "unauthorized" expenditures in support of a particular candidate, exempting them from the candidate's spending ceiling and from his control. It thus avoids any issues of censorship or of the candidate's freedom to spend his allowance as he chooses. The only question remaining is whether the limitation on individual and group expenditures itself involves an impermissible curtailment of speech.

The answer is negative. As we have seen (*supra,* p. 22), the problem of the "indirect" contribution has plagued all prior legislation and rendered it largely ineffective. Unless no effort is to be made to reduce the undue influence of big money in federal elections, there must be some limit on independent expenditures. And, because those expenditures are not counted against the candidate's spending ceiling, that limit must be low.

Of course, an allegation of necessity does not automatically establish constitutionality. Such an argument, for instance, would probably not sustain a restriction on the news media's own editorializing in favor of a candidate and the present law accordingly exempts that kind of support. But, as we have just shown, the immunity of sponsors of paid commercials is not the same. Here we deal with a very limited restriction that is covered by the principle, articulated above (*supra,* p. 44), that a sufficiently compelling need will vindicate a partial restraint on a would-be sponsor's desire to promote his candidate.

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If the risk of improper pressures on governmental employees and the "unseemliness" of their electioneering to maintain their employers in power is enough wholly to disable several million citizens from active participation in electoral campaigns—as does the Hatch Act which this Court upheld in the *Civil Service Commission* v. *Letter Carriers, supra*—a concern for preserving the integrity of the political process and opening it up meaningfully to more people is a sufficient predicate for merely limiting the money any citizen can spend on behalf of a particular candidate.

C. APPELLANTS' OTHER FIRST AMENDMENT CHALLENGES

1. Preliminary comments

Two preliminary comments are in order.

a. This case does not involve the doctrine barring prior restraints on speech. The legislation makes no attempt to censor; it is entirely neutral about the content of political advocacy. The same rules apply whether the candidate or the supporter is a Republican or Democrat or Liberal or Conservative or Independent or Communist; whether what is said or written is polite or rude, patriotic or seditious, true or false; whether the cause espoused is deemed healthy or subversive. That the law authorizes injunctive relief (2 U.S.C. 437g(a)(5) and (7) is therefore irrelevant.

Literally, of course, any bar to speech enforceable by injunction is a "prior restraint." But that is not the point of the "prior restraint" doctrine. It reflects an abhorrence of censorship, an attempt to control con-

tent. *Near* v. *Minnesota,* 283 U.S. 713–719; *Pittsburgh Press Co.* v. *Human Rel. Comm'n., supra,* 413 U.S. at 389–390. The doctrine has no application to a clear-cut prohibition or limitation unrelated to content. The challenged statute no more imposes a forbidden "prior restraint" than would a law authorizing injunctions to enforce a ban on the sale and distribution of newspapers on throughways or, indeed, a rule fixing the total time for television commercials on any given channel at two hours per day—whatever other First Amendment objections might prevail against such restrictions.

b. There is likewise no issue of press freedom here. The legislation is at pains to avoid any restriction whatever, qualitative or quantitative, or temporal (see *Mills* v. *Alabama, supra*), on what publishers and broadcasters may say about election issues or candidates. Expressly excluded from the definition of "expenditure" is "any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication." 2 U.S.C. 431(f)(4)(A); 18 U.S.C. 591(f)(4)(A). Nor is what such a publisher or broadcaster writes or says treated as a "contribution," however openly he supports a particular candidate. See 120 Cong. Rec. H10330 (daily ed., Oct. 10, 1974); H.R. Rep. No. 93–1239, 93d Cong., 2d Sess. 4 (1974); opinion below, J.S. App. 1536–1537. No obligation of reporting or disclosure is imposed on the press or the electronic media.

It may be that publishers and broadcasters are indirectly affected by the ceilings on political giving and spending in that the total volume of paid political commercials will decrease. But any such injury is too insubstantial and remote to have constitutional significance. In its impact on the press, this statute bears no resemblance to the direct tax struck down in *Grosjean* v. *American Press Co.*, 297 U.S. 233, on the ground that it had "the plain purpose of penalizing the publishers and curtailing the circulation of a selected group of newspapers." *Id.* at 251.

The constitutional guarantee of freedom of the press does not merely condemn governmental action that "takes money from the pockets" of publishers and broadcasters, but exists for the benefit of the citizenry. *Id.* at 250; *New York Times Co.* v. *Sullivan, supra,* 376 U.S. at 266; *Red Lion Broadcasting Co.* v. *Federal Communications Commission,* 395 U.S. 367, 390. But the interest of viewers and listeners and readers, "paramount" as it is, does not require newspapers or broadcasters to accept any paid political message. *Columbia Broadcasting* v. *Democratic Comm., supra;* 47 U.S.C. 315(a); *Miami Herald Publishing Co.* v. *Tornillo, supra.* Indeed, so long as they do not discriminate, even governmentally-owned or assisted channels of communication are constitutionally free, at least in some circumstances, to ban all political advertisements. 47 U.S.C. (Supp. III) 399 (a); *Lehman* v. *City of Shaker Heights, supra;* and see *Columbia Broadcasting* v. *Democratic Comm.,*

supra, 412 U.S. at 121–132 and 146–147 (White, J., concurring). Nor does the First Amendment's concern for the widest debate prevent a flat ban on active electioneering—including the sponsoring of commercials—by several millions of government employees. *Civil Service Commission* v. *Letter Carriers, supra; Broadrick* v. *Oklahoma,* 413 U.S. 601. There is, therefore, no valid basis for complaint that the present legislation "deprives" the public of some political speech.

Moreover, no real risk exists that any speech will go uncommunicated. To be sure, 18 U.S.C. 608(e) prevents any independent individual or group from placing a full-page advertisement supporting a single candidate in a major daily newspaper or sponsoring more than a modest television commercial. See Findings I, ¶¶ 65, 86; J. App. 32, 49. But the provision does not bar the expression of that support in other ways, nor does it affect the freedom of the candidate or his campaign committee from using contributions to this end.

Whatever the impact of Section 608(e) on the sponsor's right of free speech (see *supra,* pp. 47–52), it does not work any measurable abridgement of the public's interest in a free press. Given the "equal time" provision of the Communications Act, 47 U.S.C. 315, the Fairness Doctrine (including the "personal attack" and "editorial-reply" rules), and the complementary *Cullman* doctrine, there is no reason to anticipate that the challenged legislation will deprive the audience of any point of view. See *Columbia Broadcasting* v.

Democratic Comm., supra, 412 U.S. at 122–125; *Red Lion Broadcasting Co.* v. *Federal Communications Commission, supra,* 395 U.S. at 386–395. On the contrary, the object is to encourage more voices to be heard by subduing—but not suppressing—the disproportionate influence of the wealthy few. Cf. *Citizen Publishing Co.* v. *United States,* 394 U.S. 131, 139–140; *Associated Press* v. *United States,* 326 U.S. 1, 20. That result serves, rather than defeats, the premise of press freedom.

2. Contribution ceilings and freedom of speech

Limitations on direct political contributions—as opposed to expenditures—do not violate the First Amendment. For this proposition, we need say little more than that it has been endorsed by Mr. Chief Justice Warren, Mr. Justice Black and Mr. Justice Douglas. As already noted, the three Justices, dissenting in *United States* v. *Auto Workers, supra,* 352 U.S. at 593–598, joined in an opinion holding the total ban on union expenditures for a political broadcast offensive to the First Amendment but expressly stated that Congress "can prohibit * * * large contributions by labor unions to candidates for office and to political parties." *Id.* at 598, n. 2.

a. To conclude otherwise is to equate money and speech or money and political association. This would turn the decision in *New York Times Co.* v. *Sullivan, supra,* on its head. That case held that paid political expression remains protected speech notwithstanding

that it is paid for: it did not remotely suggest that the giving—or indeed the spending—of money for political purposes is itself a First Amendment activity. Nor does any decision of this Court hold that the mere pooling of financial contributions for political purposes is protected "assembly" or "association". The focus of the First Amendment is on the right of citizens to join together in body or mind, in speech or action, for a common political cause; meeting and membership are protected, not the mingling of money. See *N.A.A.C.P.* v. *Alabama, supra,* 357 U.S. at 460; *Bates* v. *Little Rock, supra,* 361 U.S. at 522–523; *N.A.A.C.P.* v. *Button, supra,* 371 U.S. at 430–431; *Kusper* v. *Pontikes, supra,* 414 U.S. at 56–57.

So saying, we do not ignore that "[i]t usually costs money to communicate an idea to a large audience," *United States* v. *Auto Workers, supra,* 352 U.S. at 594 (Douglas, J., dissenting), and that political parties and groups cannot be effective without substantial funds. But we must be wary of equating contemporary "reality" with constitutional necessity. Cf. *Felix Frankfurter Reminisces* 339–340 (Anchor 1962). The present importance of money in federal elections is not a constitutional imperative: there are ways of diminishing that dependence and, to a modest extent, the new law works in that direction.

Nevertheless, it would presumably offend the First Amendment rights of free expression and free association to prohibit all spending by individuals and groups for political purposes. But expenditures and

contributions must be distinguished. The nexus between expression and expenditures for political "commercials" is closer than it is with respect to contributions, which may or may not be used for written or spoken statements supporting the candidate and, at best, will not directly finance the contributor's own message. If adequate public funds were made available on a non-discriminatory basis to candidates, political parties and other political organizations, there would be no constitutional inhibition to a complete ban on direct political contributions from private sources. The fact is that private contributions are not essential to freedom of expression or freedom of association.

b. At all events, merely restricting the amount of contributions to, or earmarked for, specified political candidates does not violate the First Amendment. The challenged provisions do not inhibit the freedom of citizens to form a political group or to join an already existing party. Indeed, as long as the organization is not the express agent of a single candidate, any individual remains free to contribute up to $25,000, and, if the organization is not actively committed to any particular candidate, no limit applies to contributions made by committees that do not go to individual candidates. There can be no claim that political associations are starved of necessary funds. Nor are they rendered impotent. While qualifying political committees are limited to a $5,000 direct contribution to any single candidate (18 U.S.C. 608(b)(2)), their

total contributions are unrestricted, and official party committees may, in addition, spend substantial sums on behalf of any candidate (18 U.S.C. 608(f)).

The citizen also retains his individual voice. He remains free meaningfully to give support, in his own name, to one or more candidates. A contribution of $1,000—especially when no one can make a larger one—is not derisory. He may, moreover, spend another $1,000 per candidate (with no total limit) in support of his choices (18 U.S.C. 608(e), discussed ~~*infra*~~ *supra*, pp. 47–52), plus $500 in incidental expenses (18 U.S.C. 591(e)(5), 591(f)(4)). Only relatively few will be affected by these limits and even they are far from silenced.

As we have seen (*supra,* pp. 23–27), one objective of the new law is to encourage more citizens to become politically active by assuring the less affluent that their donations will not be superfluous or so relatively insignificant as to go unnoticed. The legislation, far from stifling the expression of any point of view, or discouraging political association, tends to open political campaigns to every opinion and thereby serves the central goal of the First Amendment.

3. Public financing and the First Amendment

Except insofar as the claim of invidious discrimination against challengers and new or minor parties (with which we deal in Point III, *infra*) rests on the First Amendment as well as the Fifth, public financing of federal election campaigns involves no First Amendment violation. The suggestion that the scheme

impermissibly "involves" the government in the area of political expression is without substance.

a. The dispositive fact is that the First Amendment includes no "Establishment Clause" with respect to speech or press or assembly. The "church-and-state" analogy (Appellants' Br. 146–150) is therefore inapt. Government may not censor speech, but it may subsidize or build or operate or allocate the means of communication—activities prohibited with respect to religion. One need only consider the United States Postal Service, the licensing and regulation of commercial broadcasting, the substantial grants to educational radio and television stations (47 U.S.C. 390–399), the expenditures made by State and Federal governments to conduct elections, the preferential postal rates (39 C.F.R. 132.2) and antitrust exemptions (15 U.S.C. 1801–1804) for newspapers, the comprehensive regulation of telephone and telegraph operations and charges (47 U.S.C. 201–223), and the establishment and maintenance of public libraries, halls and parks.

To be sure, one can argue, as a matter of policy or political philosophy, that it is "dangerous" to make federal elections dependent on public money, because the government—presumably the incumbent Administration—will then be in a position, albeit illegally, to manipulate the outcome. We could retort that it is safer to place that power of the purse in governmental hands than in the hands of aggregated private wealth. But, constitutionally, those considerations are irrelevant. In the eye of the Constitution, there being

no prohibition, it is enough that public funds are appropriated for objectives that Congress (as we have seen) has power to further.

b. Given the ends served by public financing of Presidential elections, the necessary moneys can be raised by taxes levied in the promotion of the "general Welfare of the United States." Const., Art. I, Section 8, clause 1; see *United States* v. *Butler,* 297 U.S. 1, 66. As this Court recently observed, "it is difficult to single out any [governmental function supported from general revenues] of a higher order than the conduct of elections at all levels to bring forth those persons desired by their fellow citizens to govern." *Bullock* v. *Carter, supra,* 405 U.S. at 148–149. Nor is government limited to providing election machinery and supervisory staff: it may directly subsidize or reimburse candidates or their political parties. *American Party of Texas* v. *White,* 415 U.S. 767, 791–794.

In our view, there could be no objection if the moneys needed were directly appropriated from the Treasury without express taxpayer approval, so long as the funds are not committed to a partisan cause or to favor a particular group of candidates. Compare *Machinists* v. *Street,* 367 U.S. 740; *Lathrop* v. *Donohue,* 367 U.S. 820. That some of those whose money is used disapprove of all the beneficiaries is no sounder an objection than that some taxpayers disapprove of a particular government spending objective. But, at all events, there can be no infirmity in a scheme that em-

ploys only funds voluntarily contributed for the purpose.

Of course, there were alternative solutions. It was suggested that the taxpayer be allowed to designate the party or candidate he wished to have receive his contribution. That scheme has obvious deficiencies, however: it excludes any independent candidate who becomes known only after the tax returns are filed; it freezes the subsidy of each beneficiary at an early date in the campaign; it compels voters to choose before they have heard much of the debate, and, under present practice, before the nominees of the major parties have been chosen; and it unnecessarily reveals to the government the citizen's political preference.

Nor is the "voucher" system advocated by Senator Metcalf (see Senator Metcalf's *amicus* brief, pp. 46–51, and Appellants' brief, pp. 151–152, 163) without its dangers. The potential for abuse, through coercive pressures on voucher holders and "black market" purchases at cut-rate prices, is evident enough. Again, unless the citizen is to hold back his voucher contribution until it is too late to help his candidate much, he will have committed himself without benefit of the campaign discussion.

But, at all events, the existence of other possible schemes does not invalidate the present congressional choice. The Constitution does not mandate a single solution: it only forbids some.

c. There is, in our view, no other First Amendment question with respect to the public financing provi-

sions of the challenged legislation. The suggestion that substituting public money for private contributions will estrange the Presidential candidate from his supporters, or the elected President from the citizenry at large, misses the mark. Of course, dependence on campaign donations, especially from moneyed interests, will end. But that is no loss. Nor is the link between the candidate and his audience severed: he must still win votes to gain election.

d. Of course, public funds cannot be allocated in a way that is intended to favor one candidate or political party or disadvantage any political aspirant. Government must be neutral. That concern has led to many provisions of law inhibiting "interference" by the government or its agents in political activity. See, *e.g.*, the Hatch Act, 5 U.S.C. 7324(a); 47 U.S.C. 326; 47 U.S.C. 398. The First Amendment would condemn any scheme that grossly discriminated on its face (*e.g., O'Brien* v. *Skinner,* 414 U.S. 524), or which invited such discrimination. See *e.g., Shuttlesworth* v. *Birmingham,* 394 U.S. 147. Because the charge of discrimination is in essence the same one advanced under the equal protection principle embodied in the Due Process Clause of the Fifth Amendment, we discuss it below (see Point III, *infra*).

4. Vagueness

Appellants contend (Br. 113–114, 213–215, 220–221) that certain provisions of the Federal Election Campaign Act Amendments are so imprecise or ambiguous as to require their invalidation for "vagueness," a

doctrine of special application when First Amendment rights are implicated.

The answer is supplied by *Civil Service Commission* v. *Letter Carriers, supra,* 413 U.S. at 568–581. There the Court was confronting the argument that the Hatch Act prohibition on government employees taking "an active part in political management or in political campaigns" was void for vagueness. To be sure, that broad generality was given more concrete content by congressional adoption in 1940 of prior Civil Service Commission rulings. But the Court recognized that, even so, it was necessary to evolve "a more refined definition of what conduct would or would not violate the statutory prohibition" and that it was entirely proper for Congress to leave that task to the Commission by a process that would continue "down through the years." *Id.* at 575. The Court also noted that "the Commission has established a procedure by which an employee in doubt about the validity of a proposed course of conduct may seek and obtain advice from the Commission and thereby remove any doubt there may be as to the meaning of the law, at least insofar as the Commission itself is concerned." *Id.* at 580, footnote omitted; see, also, *Federal Trade Commission* v. *Colgate-Palmolive Co.,* 380 U.S. 374, 394.

Those principles govern here. Congress expressly directed the Federal Election Commission to resolve ambiguities in the Campaign Act Amendments through rules and regulations (2 U.S.C. 438(a)(10))

and advisory opinions at the request of any federal office holder, candidate or political committee (2 U.S.C. 437f). There is thus no serious risk that any provision will remain unclear, except only insofar as "there are limitations in the English language with respect to being both specific and manageably brief." *Letter Carriers, supra,* 413 U.S. at 578–579.

Nor is there any cause to fear that clarifying interpretations will be so long delayed as to produce a substantial "chilling" of activity protected by the First Amendment in the meantime. An affected party can obtain a prompt ruling for his case by requesting an advisory opinion. Indeed, many requests for such opinions have already been submitted. See 40 Fed. Reg. 26660–26666, 28044–28045, 28944–28945, 30258–30259, and as of October 14, 1975, the Commission has issued more than 20 of them. See 40 Fed. Reg. 29792–29794, 31315–31317, 34084–34085, 36092–36094, 36242–36243, 36746–36747, 40673–40675, 42838–42840, 44040, 45292–45293, 45295–45296, 47691.

III

THE LEGISLATION DOES NOT INVIDIOUSLY DISCRIMINATE AGAINST CHALLENGERS OR CANDIDATES OF MINOR OR NEW PARTIES

Appellants contend (Br. 94–104, 127–138, 152–169) that the Federal Election Campaign Act Amendments invidiously discriminate against challengers to incumbents and against candidates of minor or new parties.

The first answer is that the challenge is essentially premature. So saying, we invoke no jurisdictional doc-

trines of "ripeness" or "prematurity." We mean only that, until an electoral campaign is held under the new rules, no one really knows precisely what their practical impact will be. It is impossible to predict with assurance who will be helped and who will be hurt. Accordingly, we urge that the Court should proceed cautiously in assessing the claim of discrimination.

Of course, it would be proper to entertain any claim that the new rules will inevitably grossly prejudice one group or another. But, to prove such a charge, appellants carry a heavy burden. Since the subject-matter is one with respect to which the Members of Congress are peculiarly knowledgeable, it is difficult to say that the law works gross injustice without thereby imputing improper motives to its framers.

What, then, are the main complaints? We can summarize them under two heads: (1) that the contribution, and especially the expenditure, ceilings grossly favor incumbents and major party candidates, and (2) that the public financing provisions for Presidential primaries and elections grossly favor the major party candidates.

A. THE CONTRIBUTION AND EXPENDITURE CEILINGS

By imposing contribution and expenditure limits, the Federal Election Campaign Act Amendments are said to discriminate against two groups: challengers and minor party or independent candidates. Although the situations often coincide, it is appropriate to treat the claims separately. We first look at the effect of the

new law insofar as it is alleged to entrench incumbents against primary challengers (usually major party candidates), and then consider the position of minor party and independent candidates.

1. Challengers

It is a well-known fact of American political life that, in most cases, the incumbent seeking reelection enjoys a substantial advantage over a new challenger. There are many reasons: the incumbent is usually the better known figure; he can claim the benefit of experience in the particular office; he has a longer opportunity to know his constituency and his constituents; he is in a better position to "make" news and thereby win free publicity; without serious check, he has the services of a staff paid with public funds; and, finally, he can use the franking privilege to communicate with his constituents during the campaign (but see 2 U.S.C. 439b).

If one looks at the history of the Presidency, the "momentum" of incumbency seems almost insurmountable. In this century, no sitting President who wanted it has ever failed to gain renomination by his party and, with only two very special exceptions,[10] he has won reelection as well. Congressmen and Sen-

[10] President Taft was defeated in 1912 when a faction of his party supported former President Roosevelt and Woodrow Wilson was elected with only 42 percent of the popular vote. Findings I, ¶ 75; J. App. 40. President Hoover was defeated by Franklin Roosevelt in 1932, the depth of the worst depression in the Nation's history. Findings I, ¶ 85; J. App. 41.

ators are somewhat less secure they can be defeated by age, scandal, apparent estrangement from their constituents, or simply by an irresistibly charismatic challenger. But the tradition remains that here, too, the incumbent is usually returned to office. Thus, only a total of 57 incumbents were defeated in the 1972 and 1974 elections. Findings IIA, ¶¶ 3–6; J. App. 269–394.

In the light of these realities (so much stressed by appellants, Br. 94–104, 127–129), one may wonder whether the new federal election campaign statutes can do any harm. The charge, however, is that the law aggravates the plight of challengers by preventing them, henceforth, from attempting to overcome their disadvantage by receiving larger contributions and spending more than incumbents. To impose the same ceilings on both incumbent and challenger, it is said, is to ensure that the former, with a big head start, will prevail.

The argument has a superficial logic. But there is a fundamental flaw: what is ignored is that, among the advantages incumbents usually enjoy, is a substantially greater ability to raise campaign funds, especially large contributions. Thus, if there were no limit on the size of contributions, and no ceiling on total expenditures, one would expect the threatened incumbent to be able to win the fund-raising contest and to outspend the challenger. Not surprisingly, that is precisely what actual experience shows.

Thus, in the two most recent congressional elections

of 1972 and 1974, incumbents on average outspent their major party opponents by nearly two to one (Findings IIA, ¶¶ 14, 24, 37, 45; J. App. 442, 444, 447–448, 449), and more than twice as many incumbents as challengers spent more than would be allowed by present law. Findings IIA, ¶¶ 18, 28, 40, 47; J. App. 442–443, 445, 448, 450. It is true that of the 57 races in 1972 in which incumbents were defeated, they were outspent in 34 instances. Findings IIA, ¶¶ 3–6, 20, 30, 42, 49; J. App. 269–394, 443, 445, 449, 450. But in all but 9 cases the successful challenger did not exceed the present spending limits. Findings IIA, ¶¶ 19, 20, 29, 30, 41, 42, 48, 49; J. App. 443, 445, 448–449, 450. The upshot is that the expenditure ceilings would apparently hurt incumbents as a class more than challengers as a class.

Nor is there any indication that the contribution ceilings now imposed will disadvantage challengers. In the 1974 congressional elections in which major party candidates challenged incumbents, a $1,000 limitation on individual contributions would have yielded for major party challengers almost exactly the same percentage (just over one-half) of the funds raised by incumbents, the latter losing substantially more dollars. See Findings IIA, ¶¶ 55, 57–58. J. App. 452, 453. With respect to the most recent Presidential election, the major party challengers, it seems, would have been relatively much better off. See Findings IIA, ¶ 74; J. App. 458.

The claim (Appellants' Br. 129–138) that challengers, unlike incumbents, have a special need to

raise "seed money" through large contributions is simply unproven. No doubt some challengers have received large donations at the start of a campaign, as have incumbents. But there is no evidence that this is necessary to a viable contest. Indeed, the experience of Ramsey Clark, who successfully raised more than $850,000 in contributions limited to $100 (see Findings I, ¶¶ 182, 185–186; J. App. 260, 261), suggests that a $1,000 limit will not seriously prejudice challengers.[11]

2. Minor party and independent candidates

The claim that the giving and spending limits imposed by the new law discriminate against minor party and independent candidates has even less foundation than the attack made on behalf of major party challengers. The bald fact is that only a single minor party or independent candidate in the 1972 and 1974 congressional elections exceeded the present spending limit. Findings IIA, ¶¶ 7, 19, 29, 41, 48; J. App. 395–422, 443, 445, 448–449, 450. And, of course, none came close to the ceiling in the most recent Presidential election. Finding IIA, ¶ 51; J. App. 451. When this is contrasted with the showing that 77 major party candidates for Congress in 1972 and 1974 spent

[11] Also indicative is the fact that, in the 1972 Presidential race, Senator McGovern accumulated some $24 million in contributions not exceeding $1,000. Findings IIA, ¶ 72; J. App. 457. And see the amounts raised as of the end of 1974 by 1976 Presidential candidates in contributions up to $1,000. Findings I, ¶ 196; J. App. 263–264.

more than the present law permits (Findings IIA, ¶¶ 18, 28, 40, 47; J. App. 442–443, 445, 448, 450) and that both major-party candidates for the Presidency did so in 1972 (Findings IIA, ¶ 71; J. App. 457), it is evident that minor party and independent candidates will be relatively better off under the expenditure limits fixed by the Federal Election Campaign Act Amendments.

Nor is there any indication that the new contributions limits will disadvantage those who do not represent a major party. On the contrary, it appears that in the 1972 Presidential elections minor party and independent candidates would have relatively benefitted from the new contributions ceilings (Findings IIA, ¶¶ 75; J. App. 458), and congressional candidates in 1974 would not have suffered. See Findings IIA, ¶¶ 59–60, 115; J. App. 453–454, 473–474.

Appellants have failed to demonstrate, as is their burden, that the challenged contributions and expenditure ceilings will invidiously discriminate against challengers or against minor party and independent candidates. To the contrary, those provisions are likely to reduce the present advantages enjoyed by incumbents and major party candidates by making it more difficult for entrenched office holders to overcome any serious challenge by raising more money and outspending their opponents. The net effect is to afford outsiders a better chance, even if still very unequal. That the balance is not fully redressed is no basis for a charge of discrimination.

that the legislation does not aggregate ex-

B. PUBLIC FUNDING OF PRESIDENTIAL ELECTIONS

The charge (Appellants' Br. 152–169) that the public funding provisions of the new law discriminate against minor and new parties and independent candidates is entirely conjectural, if not a little unreal, since no candidate not of a major party has remotely approached the Presidency since Theodore Roosevelt's "Bull Moose" defection. Once again, it is no ground for faulting the Campaign Act that it does not so radically change the status quo as fully to even the odds for the candidate of an entirely new party as against the nominees of the two traditional major parties. Our submission is that the new law helps new challengers. But, in answer to the appellants' charge, it is enough ~~that seek to restrict the number of candidates who~~ isting disparities.

We examine first the eligibility conditions for entitlement to any public funds, leaving to later consideration the allocation formulae.

1. Eligibility provisions

Although public funds are not made available to every would-be candidate for the Presidency, no matter how frivolous, that is as it should be. The Court has expressly approved various State election rules that seek to restrict the number of candidates who enter the lists, noting that "a State has an interest, if not a duty, to protect the integrity of its political processes from frivolous or fraudulent candidacies." *Bullock* v. *Carter, supra,* 405 U.S. at 145. Beyond that, it has been recognized as proper to take measures to discourage "splintered parties and unre-

strained factionalism" (*Storer* v. *Brown,* 415 U.S. 724, 736), and "to prevent the clogging of [the] election machinery, avoid voter confusion, and assure that the winner is the choice of a majority, or at least a strong plurality, of those voting." *Bullock* v. *Carter, supra,* 405 U.S. at 145.

If these interests may be served by denying a place on a ballot to those who do not first demonstrate substantial popular support, as the Court has repeatedly stated (*Williams* v. *Rhodes, supra,* 393 U.S. at 31–33; *Jenness* v. *Fortson,* 403 U.S. 431, 442; *Bullock* v. *Carter, supra,* 405 U.S. at 145; *Lubin* v. *Panish, supra,* 415 U.S. at 718–719; *Storer* v. *Brown, supra,* 415 U.S. at 736; *American Party of Texas* v. *White, supra,* 415 U.S. at 781), it must follow, *a fortiori,* that the same considerations will justify the lesser deterrent of withholding a public subsidy. Thus, the question is not whether it is permissible to restrict eligibility for public funds, but whether the mechanisms selected are too restrictive.

a. We begin with the Presidential primary matching fund scheme. Subject to the overall $10 million spending limitation [12] and to the availability of sufficient moneys in the Presidential Election Campaign Fund,[13] every eligible candidate who enters Presi-

[12] No candidate may receive public funds exceeding one-half the Presidential primary spending ceiling. 26 U.S.C. 9034(b).

[13] Matching payments for primaries have the last claim on the Fund (26 U.S.C. 9037(a)), and, in the event the Presidential Primary Matching Account is insufficient to satisfy all demands, the Secretary of the Treasury is directed to "seek to achieve an equitable distribution," taking into consideration the time priority of claims. 26 U.S.C. 9037(b).

dential primaries is entitled to a matching payment up to $250 for every private contribution he receives. No distinction is made between candidates: all must meet the same eligibility test and all receive funds according to the same formula.

Nor is qualification unduly restrictive. To be eligible, the candidate must raise $5,000 (counting only the first $250 of any contribution) in each of 20 States. That requires no more than 20 relatively modest contributions of $250 in as many States and a total campaign fund of $100,000. It is a test which any serious Presidential contender should be able to meet.

Matching payments are made only to those who are engaged in "seeking nomination by a political party for election to the office of President of the United States." 26 U.S.C. 9033(b)(2). But that is no more than a recognition that it is the expense of winning nomination that is being reimbursed in part out of public funds. Those who incur no such costs are properly excluded. There is no discrimination between aspirants, whether the party whose nomination is sought is established or new, major or minor. Nor is the term "political party" restrictive: although not defined in the Internal Revenue Code, it presumably embraces any "association, committee or organization" that sponsors a Presidential candidate. See 2 U.S.C. 431 (m); 18 U.S.C. 591(i). And it makes no difference by what method the party nominee is chosen, whether by

primary election, by convention, or by caucus. See 26 U.S.C. 9032(7).[14]

In sum, the matching fund scheme is as all-embracing as possible, more so than the law upheld in *American Party of Texas* v. *White, supra,* 415 U.S. at 791–794. At all events, this financing law is no "exclusionary mechanism." *Id.* at 794. It does not offend the equal protection principle of the Fifth Amendment.

b. The public financing of Presidential nominating conventions likewise involves no impermissible discrimination. Of course, only parties holding such conventions are eligible for the grant, but the new law in no way dictates which parties should follow that procedure. Compare *American Party of Texas* v. *White, supra.*

In order to receive funding for its convention an organization must be a party which has established a footing in the political arena by winning for its candidate in the previous Presidential election 5 percent of the votes cast. See 26 U.S.C. 9008(b), 9002(7). That, however, is well within the rule that public funds may properly be reserved for serious candidacy. As the Court has said, merely because government defrays some election expenses, it is not required also to "finance the efforts of every nascent political group

[14] Despite the title of the Act (see 26 U.S.C. 9031), the operative provisions of the matching payment statute nowhere require that nomination be by "primary" election. But, even if that be implied, the cited section defines "primary election" comprehensively, as we have indicated above.

* **." *American Party of Texas* v. *White, supra,* 415 U.S. at 794.

c. The most important aspect of public financing introduced by the new law is the provision for grants to the candidates at the general election for the Presidency. Appropriately, special efforts have been made here to avoid excluding any serious contender, while at the same guarding against encouragement of frivolous candidacy. A just compromise between those two objectives has been achieved.

There are two basic eligibility requirements. The first is that the candidate must show that he presumptively represents 5 percent of the voters. This condition can be satisfied in several ways. It is enough if the applicant is the nominee of a party whose candidate at the previous Presidential election received that percentage of the popular vote. 26 U.S.C. 9002 (6) and (7), 9004(a)(1) and (2)(A). Or the candidate himself may have achieved such a past record, in which event he qualifies notwithstanding that he may now be sponsored by a new party. 26 U.S.C. 9004(a) (2)(B). Or, finally, although neither the present candidate nor his party received the necessary votes at the last election, he will still be entitled to the subsidy if he now wins 5 percent of the popular vote. 26 U.S.C. 9004(a)(3). This is a fair attempt to afford every serious aspirant a share in the scheme, imposing only a reasonable test of past or current support.

There is a further requirement that the candidate must have his name (or that of electors pledged to

him) on the Presidential ballot in 10 States. 26 U.S.C. 9002(2)(B). This is to assure a national, and not merely local, appeal in those who receive public funds. Experience tells us that such a requirement will exclude no aspirant with any real prospect of success, considering that victory in the electoral college requires the votes of the 11 most populous States or 40 of the least populous. Findings I, ¶ 51; J. App. 26. Compare *Moore* v. *Ogilvie,* 394 U.S. 814.

The public financing provisions of the new law exclude no substantial Presidential contender. It remains only to answer the charge that, among eligible candidates, the apportionment of funds is discriminatory.

2. Allocation formulae

We have already noted that the primary matching payment scheme treats every eligible candidate identically. There are, however, different allocation formulae applicable to grants for nominating conventions and for the general election. Thus, "major" parties automatically receive a full subsidy for their conventions, as do their nominees, whereas other parties and candidates are only entitled to a pro rata share based on their performance at the previous or current election. This is said to be discriminatory.

It goes without saying that any demarcation line between "major", "minor" and "new" parties is necessarily a matter of judgment. There is, however, no present basis for faulting the particular percentage figures selected, assuming that some distinction is

proper. Our submission is that it was permissible to take account of the "obvious differences in kind between the needs and potentials of a political party with historically established broad support, on the one hand, and a new or small political organization on the other." *Jenness* v. *Fortson, supra,* 403 U.S. at 441. Of course, it would be improper to use public financing to assure "a complete monopoly" to "two particular parties" (*Williams* v. *Rhodes, supra,* 393 U.S. at 32). But, as long as the status quo is not frozen, there is no objection to "encourag[ing] compromise and political stability" (*id.* at 31–32) by incentives to relatively unified large political parties. See *Jenness* v. *Fortson, supra,* 403 U.S. at 439–440. That is what the law does.

The public financing provisions are carefully designed to enable any party to win "major" party status. First, the boundary line is fixed relatively low—at 25 percent of the votes cast—and no distinction is made above that level. Second, the formula for grants to minor and new parties relates to the average of the votes received by the major party candidates—not those received by the winner—with the effect of increasing financing for lesser candidates. Third, the grants for minor candidates are strictly proportional to votes received, thereby reflecting the growth of those parties. Finally, while the initial allocation of funds is made on the basis of past performance, changes in support are recognized by providing additional grants (or first grants in the case of new parties) on the basis of current performance. The

statutory scheme, without wasting public money and unduly encouraging factionalism, effectively reflects and respects the "potential fluidity of American political life" (*Jenness* v. *Fortson, supra,* 403 U.S. at 439).

Ideally, it would be preferable to give all candidates their share of public funds before the election. That is done with respect to the nominees of all parties which have a proven record, as well as candidates who have personally achieved the required vote in the most recent election. But, unless every claimant, no matter how frivolous, is to be given $20 million for the asking, there must be a formula that tests the seriousness of candidates, and, for those who have not run before and who represent new parties, the first available record is the current election.

It is a disadvantage for them to have to borrow and receive reimbursement only if they demonstrate their support at the election. Yet that is the best that can be done, and the Constitution does not require the impossible. It would not be reasonable to deny everyone else, of proven record, his share during the obviously appropriate pre-election period simply to avoid this disparity. That would indeed be allowing the tail to wag the dog.

The general election financing scheme is imperfect only insofar as is unavoidable. On the whole, it reaches a fair accommodation. There is no invidious discrimination here.

CONCLUSION

The judgments of the court of appeals and of the district court should be affirmed.

Respectfully submitted.

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October Term, 1975.

Nos. 75-436 and 75-437

JAMES L. BUCKLEY et al.,

Appellants,

v.

HON. FRANCIS R. VALEO et al.,

Appellees.

On Appeal From the United States Court of Appeals for the District of Columbia and the United States District Court for the District of Columbia.

BRIEF OF THE FEDERAL ELECTION COMMISSION.

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IN THE

Supreme Court of the United States

—

OCTOBER TERM, 1975.

—

Nos. 75-436 AND 75-437.

—

JAMES L. BUCKLEY ET AL.,
Appellants,

v.

HON. FRANCIS R. VALEO ET AL.,
Appellees.

—

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

—

BRIEF OF THE FEDERAL ELECTION COMMISSION.

QUESTION PRESENTED.

The Commission's separate brief is addressed to the issues embraced in Question 8 of the certified questions, reading as follows: [1]

8. Do the provisions in the challenged statutes concerning the powers and method of appointment of the Federal Election Commission violate the rights of one or more of the plaintiffs under the constitutional separation of powers, the First, Fourth, Fifth, Sixth, or Ninth Amendments, Article I, Section 2, Clause 6, Article I, Section 5, Clause 1, or Article III?

1. The Commission's position with respect to the other certified questions is set forth in the brief filed on its behalf by the Department of Justice.

(a) Does 2 U. S. C. § 437(a) violate such rights by the method of appointment of the Federal Election Commission?

(b) Do 2 U. S. C. §§ 437d and 437g violate such rights, in that they entrust administration and enforcement of the FECA to the Federal Election Commission?

(c) Does 2 U. S. C. § 437g(a) violate such rights, in that it empowers the Federal Election Commission and the Attorney General to bring civil actions (including proceedings for injunctions) against any person who has engaged or who may engage in acts or practices which violate the Federal Election Campaign Act, *as amended*, or § 608, 610, 611, 613, 614, 615, 616, or 617 of Title 18?

(d) Does 2 U. S. C. § 438(c) violate such rights, in that it empowers the Federal Election Commission to make rules under the FECA in the manner specified therein?

(e) Does 2 U. S. C. § 456 violate such rights, in that it imposes a temporary disqualification on any candidate for election to federal office who is found by the Federal Election Commission to have failed to file a report required by Title III of the Federal Election Campaign Act, *as amended*?

(f) Does § 9008 of the Internal Revenue Code of 1954 violate such rights, in that it empowers the Federal Election Commission to authorize expenditures of the national committee of a party with respect to presidential nominating conventions in excess of the limits enumerated therein?

STATUTE INVOLVED.

The provision governing the establishment and composition of the Commission (2 U. S. C. § 437c) reads as follows:

> There is established a commission to be known as the Federal Election Commission. The Commission is composed of the Secretary of the Senate and the Clerk of the House of Representatives, ex officio and without right to vote, and 6 members appointed as follows:
>
> (A) two shall be appointed, with the confirmation of a majority of both Houses of the Congress, by the President pro tempore of the Senate upon the recommendations of the majority leader of the Senate and the minority leader of the Senate;
>
> (B) two shall be appointed, with the confirmation of a majority of both Houses of the Congress, by the Speaker of the House of Representatives, upon the recommendations of the majority leader of the House and the minority leader of the House; and
>
> (C) two shall be appointed, with the confirmation of a majority of both Houses of the Congress, by the President of the United States.
>
> A member appointed under subparagraph (A), (B), or (C) shall not be affiliated with the same political party as the other member appointed under such paragraph.

The various provisions bearing on the powers and functions of the Commission are set forth in the statutory pamphlet ("Federal Election Campaign Laws"), copies of which have been lodged with the Court.

STATEMENT.

The history of these proceedings is set forth in the brief filed by the Department of Justice. We confine ourselves here to a summary statement of the court of appeals' rulings on the issues embraced in Question 8.

Addressing itself to the question whether the Commission is unlawfully constituted because only two of its members are appointed by the President, the court below first observed (J. S. 1508) that the Commission is "essential to the effective functioning of the overall scheme," that the area in which it is operating is "novel and complex," and that its existence as an agency ought not to be terminated unless "wholly without legitimacy in the very terms in which it is brought into being." The court ruled further that Article II, Section 2, of the Constitution does not bar the appointment of inferior civil officers by the Legislative Branch when the officers will be engaged in the performance of dominantly legislative functions; that Congress has broad and pervasive responsibilities with respect to the conduct and control of federal elections and the prevention of corruption in the electoral process; and that Congress "draws sufficient authority from the necessary and proper clause of the Constitution" to create a Commission to aid it in the execution of those responsibilities (J. S. 1573). "We thus conclude," the court stated (*ibid.*), "that Congress has the constitutional authority to establish and appoint the Federal Election Commission to carry out appropriate legislative functions."

Recognizing that, in addition to its primary legislative functions, the Commission is authorized by certain of the statutory provisions to perform tasks that may be characterized as quasi-executive or quasi-judicial, the court reasoned that this alone does not render those provisions invalid. It must be asked whether the particular function

is sufficiently related to, or is ancillary to, an appropriate legislative function. For the most part, the court found plaintiffs' challenges to specific powers of the Commission not ripe for adjudication. This litigation, it observed (J. S. 1576), "does not present the court with the concrete facts that are necessary to an informed decision." The reach of the Commission's powers in numerous particulars, it noted, has not been administratively determined. Powers arguably granted are still unexercised and no one is adversely affected. ". . . [S]ome of the issues presented to us . . . may never reach a stage at which they would be ripe for adjudication" (*ibid.*).

The court did find, however, that two issues relating to the exercise of delegated powers were sufficiently ripe for consideration. It considered and upheld (see Question 8(b)) the Commission's authority to issue advisory opinions ("We discern no constitutional barrier that would prevent a legislative agency from informing the public of its interpretation of the statutory provision it must administer" (J. S. 1579)). It likewise adjudicated the claim (see Question 8(f)) that the Commission is granted excessive discretion insofar as it is permitted to authorize nominating convention expenditures in excess of $2 million. Construing the statute to authorize excess amounts only where "due to extraordinary and unforeseen circumstances . . . the national committee is unable to provide the services actually needed to run the convention without exceeding the statutory limit" (J. S. 1580), the court held that there were sufficient guidelines to withstand a constitutional challenge of vagueness.

INTRODUCTION AND SUMMARY.

This brief defends the legitimacy of the means chosen by Congress to establish the Federal Election Commission (the method of appointment) and the propriety of granting it various powers and functions delegated by the campaign legislation. Appellants contend that the scheme of appointment impinges on the President's powers of appointment as set forth in Article II, § 2, cl. 2 of the Constitution.[2] They also urge that various of the Commission's activities will violate the principle of separation of powers because the agency is called upon to perform quasi-executive and quasi-judicial, as well as quasi-legislative, functions.[3]

We argue, in response, as follows. *Firstly,* we point out that Article II, Section 2, of the Constitution is not preclusive of Congressional authority to exercise appointive power when the functions of the appointees are dominantly or substantially related to the performance of Congressional responsibilities. *Secondly,* we demonstrate that the Constitution confers upon the Congress broad and pervasive responsibilities in relation to the federal electoral process

2. "[The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments."

3. We agree with the court of appeals' conclusion that most of the challenges addressed to the Commission's powers are premature, and that the courts ought not attempt to adjudicate the reach of the Commission's powers in advance of concrete action taken by the Commission affecting the complaining litigants. To the extent that we deal with issues relating to the Commission's powers not reached by the court below, we do so because of the possibility that this Court may adopt somewhat differing views as to which of the numerous issues raised by appellants are sufficiently ripe to warrant consideration.

and that these embrace, in addition to Congress' legislative role, auxiliary powers of a quasi-judicial and quasi-executive character. *Thirdly,* we urge that an examination of the functions entrusted to the Commission shows that it will be acting as Congress' delegate in the performance of tasks that are a Congressional responsibility or are incidental to the discharge of that responsibility. Appellants' challenges to the Commission's powers are in large part premature and in no event well founded. *Finally,* we argue that, in light of the above, Congress' role in making four of the six appointments to the Commission on a bipartisan basis is neither incongruous nor violative of the doctrine of separation of powers.

Before reaching the merits, however, there is an important threshold question to be addressed: Whether these private appellants may challenge the composition and authority of the Commission on the ground that the President's appointive prerogatives have been impinged, when no such claim has been presented on behalf of the Excutive.[4]

4. In the court below, as here, the Department of Justice supported the Commission. The Attorney General did express reservations as to the role the Commission could properly play in the realm of civil enforcement, noting, however, that it was not clear, in light of the statutory structure, what role the Commission actually would perform in the area of enforcement and that the question was therefore premature.

ARGUMENT.

I.

Appellants Have No Cognizable Interest in Congress' Alleged Impingement Upon Presidential Powers.

Appellants urge that Congress has trenched upon the President's powers under Article II of the Constitution to appoint inferior officers, although the President signed the legislation which provided for the appointment of the members of the Federal Election Commission. Since there is no basis for any claim that Congress' appointees to the Commission lack the qualifications prescribed by the legislation, the situation is one in which private plaintiffs are seeking to litigate the validity of a provision which goes solely to the allocation of the appointive power between the Executive and the Legislative Branches. The constitutional provision which appellants invoke was not enacted for their benefit or protection, and its alleged violation here threatens them with no injury, either immediate or remote. Insofar as appellants claim that the President's powers are infringed, they are asserting that they "suffer in some indefinite way in common with people generally." *Frothingham v. Mellon*, 262 U. S. 447, 488, reaffirmed in *United States v. Richardson*, 418 U. S. 166, 173. They would "employ a federal court as a forum in which to air . . . generalized grievances about the conduct of government or the allocation of power in the Federal System," *Flast v. Cohen*, 392 U. S. 83, 106. As *Flast* further explains (392 U. S. at 99-100), "the question is whether the person whose standing is challenged is a proper party to request an adjudication of a particular issue and not whether the issue itself is justiciable." *See also Tileston v. Ullman*, 318 U. S. 44, to the effect that one

may not claim standing to vindicate the asserted constitutional rights of someone else. Repeatedly, the courts have insisted upon a showing of direct and personal injury—a requirement that fulfills several purposes. A "personal stake in the outcome of the controversy" serves to assure "that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions," *Baker v. Carr*, 369 U. S. 204. It insures against premature and unnecessary constitutional adjudication. *Schlesinger v. Reservists Committee*, 318 U. S. 208; *O'Shea v. Littleton*, 414 U. S. 488. Finally, these considerations are "especially important when the relief sought produces a confrontation with one of the coordinate branches of the government," *Schlesinger, supra*, at 222.

Two of this Court's decisions are especially worthy of note in that they, too, involved a constitutional challenge by a private plaintiff to an official's capacity to serve. In *Ex Parte Levitt*, 302 U. S. 633, a private citizen claimed that Justice Black was ineligible for appointment to the Supreme Court under Article 1, § 6, cl. 2 of the Constitution. The Court ruled (p. 634):

> It is an established principle that to entitle a private individual to invoke the judicial power to determine the validity of executive or legislative action he must show that he has sustained or is immediately in danger of sustaining a direct injury as the result of that action and it is not sufficient that he has merely a general interest common to all members of the public.[5]

In *Schlesinger, supra*, the plaintiff Reservists Committee, similarly relying on the so-called Incompatibility

5. In the recent *Richardson* and *Schlesinger* cases, *supra*, the Court reaffirmed its ruling in *Levitt*.

Clause of the Constitution, asserted that members of Congress were barred from serving in the Armed Forces Reserve. Again the Court refused to reach the merits. *Cf. Morrison v. Callaway,* 369 F. Supp. 1160 (D. D. C. 1974) (citizen-taxpayer lacks standing to challenge Alexander Haig's serving simultaneously as Assistant to the President and military officer); *Nader v. Bork,* 366 F. Supp. 104 (D. D. C. 1973) (Ralph Nader has no standing to challenge dismissal of Special Prosecutor).

It is true that in *Glidden Co. v. Zdanok,* 370 U. S. 530, the Court reached the merits of a private litigant's claim that an allegedly non-Article III judge had sat on a case properly determinable only by an Article III court. It did so because the constitutional protection at stake—the assurance to the parties that their case would be decided by a judge who had life tenure and whose compensation would not be diminished—was "designed in part for the benefit of litigants" and was so basic as to be considered "jurisdictional" (p. 536). Even so, it observed (p. 535):

> [T]his Court has described it as well settled "that where there is an office to be filled and one acting under color of authority fills the office and discharges its duties, his actions are those of an officer *de facto* and binding upon the public." *McDowell v. United States,* 159 U.S. 596, 602 . . . Although a United States Attorney may be permitted on behalf of the public to upset an order issued upon defective authority, *Frad v. Kelley,* 302 U.S. 312, a private litigant ordinarily may not. *Ball v. United States,* 140 U.S. 118, 128-29.[6]

6. Since the decision in *Glidden,* the courts of appeals have repeatedly refused to consider challenges by draft registrants to the composition of local draft boards. *Gee v. Smith,* 479 F. 2d 642 (5th Cir. 1973) (claim of racial discrimination in composition of draft board cannot be raised as defense to conviction of refusal to submit to induction); *United States v. Potter,* 467 F. 2d 1316 (6th Cir. 1972); *United States v. Chaudron,* 425 F. 2d 605 (8th Cir. 1970) (residential qualifications of members of Local Draft Board not subject to attack by way of defense to a refusal to report indictment); *Czepil v. Hershey,* 425 F. 2d 251 (7th Cir. 1970) (residential qualifications of board not subject to attack in a pre-induction suit for injunction; qualification of members must be raised by proceedings in nature of *quo warranto*). Yet, in all of these cases—in marked contrast to the situation posed by the instant case—the complainants were in a position to assert that the defect went to the qualifications of the board members to decide their cases fairly.

Appellants may suggest that they have standing because the Federal Election Campaign Act Amendments provide that "the national committee of any political party, or any individual eligible to vote in any election for the office of President of the United States may institute such actions . . . as may be appropriate to construe the constitutionality of any provision of this Act . . . 2 U. S. C. § 437h(a)." However, this provision should not be read to confer standing on persons who fail to show a substantial impact upon their conduct. This is confirmed by the relevant Conference Report which states that the special judicial review provisions of the Act "are available only for actions directed at determining the constitutionality of provisions of the Act and of provisions of title 18, United States Code, *related to the activities regulated by the Act*" (emphasis added).[7] Moreover, the statutory language "as may be appropriate" hardly evinces a purpose to override unbroken judicial precedents and to invite private parties who suffer no conceivable injury to dispute a question involving only the allocation of authority between two coordinate branches of government.[8]

7. Conference Report on S. 3044, No. 93-1237, 93d Cong., 2d Sess.; p. 96.

8. We note parenthetically that our interpretation is not one which forecloses the possibility of judicial review, although it should be added that, even if that were the case, judicial resolution

We accordingly urge that this Court rule that appellants are without any injury or interest which would justify their litigating the validity of the method by which the Commissioners were appointed. In the portions of the brief that follow, we shall assume, solely for the purposes of argument, that the merits of Question 8 are open and set forth our reasons for believing that, in the present context, the sharing of the appointive power between Congress and the President in the case of the Election Commission is both constitutional and highly appropriate.

II.

Congress May Constitutionally Appoint Officers Whose Functions Are Dominantly or Substantially Related to the Performance of Congressional Responsibilities.

A. Literally read, Article II, § 2, cl. 2 makes no provision for the appointment of any officers by the Legislative Branch. So construed, the provision would indicate that the Senate is without authority to select its Secretary; that the House lacks power to designate a Clerk or Sergeant of Arms; and that both branches of Congress are acting unconstitutionally in picking their committee staffs,

8. (Cont'd.)
of all constitutional questions is not inherent in our governmental system. *United States v. Richardson*, 418 U. S. 166. The appropriate method for raising the issue of the validity of the provision under which the Commissioners serve is by way of an action in the nature of *quo warranto* brought by the Attorney General. *See, e.g., Springer v. Philippine Islands*, 277 U. S. 189; *Newman v. United States ex rel. Frizzell*, 238 U. S. 537; *Wallace v. Anderson*, 5 Wheat. 291; *Application of James*, 241 F. Supp. 858 (S. D. N. Y. 1965). Note that the plaintiff in *Newman* relied upon a provision of the D. C. Code authorizing suit by the Attorney General or an "interested person" against a person who unlawfully holds public office. The Court was clear that the reference to an "interested person" would permit suit only by an individual who laid claim to the office in question and was not to be read as authorizing suit by one who alleged only a general interest as citizen and taxpayer. 238 U. S. at 547.

investigators and administrative personnel.[9] As we point out below, history as well as common sense refutes any such proposition.

A reading of the records of the Constitutional Convention shows that the differences of opinion with respect to the power of appointment focused on the question of the degree to which Congress should control or participate in the selection of *executive* officers. Under the Articles of Confederation, Congress alone had the power to appoint "committees and civil officers as may be necessary for managing the general affairs of the United States . . ." (Article 9).[10] Some of the members of the Convention, highly conscious of the then prevailing practice, were of the view, expressed by Gouverneur Morris, that the legislature is a body "too numerous" to continue to exercise that authority.[11] James Wilson was of the opinion that "there can be no good Executive without a responsible appointment of officers to execute" but believed that the nomina-

9. Article I, § 2 does provide, "The House of Representatives shall chuse their speaker and other Officers." Similarly, Article I, § 3, after providing that the Vice President of the United States shall be President of the Senate, states, "The Senate shall chuse their other Officers. . ." Read in context, however, these provisions appear to contemplate official posts to be occupied by the Representatives and Senators themselves. The records of the convention are silent on the point. Accordingly, we do not rest on these provisions (although they could be more broadly construed) but, as developed *infra*, on the proposition that, at a minimum, Congress has power to appoint inferior officers and employees to the extent "necessary and proper for carrying into Execution" its express or inherent powers (Art. I, § 8, cl. 18).

10. It also appears that under the State Constitutions in force between 1776 and 1787 the power of appointment was largely exercised by the legislatures. Thorpe, "Federal and State Constitutions" (1929).

11. Farrand, "The Records of the Federal Convention of 1787" v. II, p. 389 (rev. ed. 1966). See, also, *id.*, p. 539, where Morris remarks, "As Congress now makes appointments, there is no responsibility," and suggests a division of functions between the President and the Senate.

tions should be made by a Council of Advice.[12] He further defined executive powers as "those of executing the laws, and appointing officers not appertaining to and appointed by the Legislature." [13] Mr. Sherman took the position that it was "proper that many officers in the Executive Department" should be appointed by the President but that "many ought not, as general officers of the Army in time of peace," because of the abiding danger that the Executive "may set up an absolute government." [14] In essence, there were two opposing pressures: one exerted by those who felt that the Congress should not be deeply implicated in the selection of executive officers because responsibility should be centered; the other exerted by those who feared that centralization of appointive authority could lead to despotism.

Article II, § 2, cl. 2, as it finally evolved, reflects a compromise. The President's power to appoint ambassadors, public ministers and consuls, and Judges of the Supreme Court is made subject to Senate confirmation. The President may appoint other officers only when the positions are "established by Law." [15] These appointments are also subject to Senate confirmation except that Congress has discretion to vest the sole power of appointment of "inferior Officers" in the President, the heads of departments or the courts of law. Congress, moreover, is free to establish the criteria for filling any vacancy.[16]

12. *Id.* pp. 538-9. Mason, Franklin and Dickinson also supported the idea of a Council. *Id.* p. 542.

13. Galliard Hunt and James Scott Brown, eds., "The Debates of the Federal Convention of 1787" (New York: Oxford University Press, 1920), p. 38.

14. Farrand, p. 405.

15. The express purpose of this language, added to the original text, was to "obviate doubts" that the President might appoint officers to positions not created by the Congress. *Ibid.*

16. In his dissenting opinion in *Myers v. United States*, 272 U. S. 52, Justice Brandeis collected some of the many statutes by

The important point for present purposes is that Congress was concerned to give the President ample power to select his own officers to execute the laws while retaining an effective degree of control—in the words of Gouverneur Morris, to give the President "responsibility" while retaining in the Congress sufficient control to provide "security." [17] There is not the slightest hint in the proceedings of the Convention that the Framers, who were of course highly sensitive to the dangers of executive authority and who debated at length the appropriate limitations to be imposed upon the President's appointive authority, had any thought to deprive the Congress, which was to exercise those controls, of the power to appoint its own inferior officers for purposes of executing such business as was appropriately related to Congressional functions. To do so would have relegated Congress, which contemporaneously exercised the appointive power exclusively, to a position below that of the co-equal branches (the Framers having also provided that the power to appoint inferior officers might be delegated to the courts of law [18]).

It can hardly be disputed, then, that Congress, at the least, has inherent power to appoint inferior officers or

16. (Cont'd.)
which Congress has traditionally "restrict[ed] the exercise by the President of the power of nomination" (p. 269). Included are a number of statutes that "confined the President's selection to a small number of persons to be named by others" (p. 274).

17. Farrand, p. 539.

18. In the Judiciary Act of 1789, § 7 (1 Stat. 73), Congress delegated to the Supreme Court and the district courts the authority to appoint their respective clerks. Ruling in *In Re Hennen*, 13 Pet. 230, that this carried with it the power to remove the clerk in the court's discretion, this Court observed that the power to appoint inferior officers, as spelled out in the Constitution, "was no doubt intended to be exercised by the department of the government to which the officer to be appointed most appropriately belonged" (13 Pet. at 258). As *Hennen* indicates and as the court below assumed, officers of the three departments are unquestionably officers of the United States.

employees for the discharge of its own responsibilities and the conduct of its own business. If it were necessary to look for explicit Constitutional authority to support the view that Congress may make appointments of that character, the grant of power embraced by the "necessary and proper" clause (Art. 1, § 8, cl. 18) would surely provide it. With these propositions, all members of the court below were in apparent agreement.[19]

B. Moreover, the practice prevailing from the earliest days of the Republic fully supports the conclusion that Congress does not lack appointive power. This is not to say that Congress may make the appointment to any office that it creates. We assume that the power is limited to the situation where the function performed by the appointee bears a significant relationship to Congressional responsibilities. Our positon, elaborated in the section of the brief that follows, is that Congress has a special and pervasive role in relation to the electoral process—a constitutional role which plainly involves the performance of quasi-judicial and quasi-executive tasks as well as the conventional legislative function. At this juncture, we point out that, quite apart from its role in the electoral process, Congress has from the beginning exercised an appointive power in a wide variety of situations (in some, with less obvious justification than is present in the instant case) and that the legitimacy of these actions has been unquestioned. The

19. Appellants erroneously state (Br. 194) that the court below ruled that the FEC commissioners are not officers of the United States. Rather, it held that the grant of power to the President to appoint civil officers of the United States is not to be read as preclusive of Congressional authority to appoint such officers to aid in the discharge of Congressional responsibilities—specifically, the responsibility (quoting from *Smiley v. Holm*, 285 U. S. 355, 366) to prevent "fraud and corrupt practices" in the federal electoral process. Congress' power to appoint officers or commissioners to perform dominantly legislative functions, it stated, "draws sufficient authority from the necessary and proper clause . . ." See J. S. 1572-3.

instances are so numerous that we confine ourselves to illustrative examples.

Virtually the first act of the House of Representatives was to appoint a Clerk of the House.[20]

In 1792, the Second Congress, a body largely influenced by men who were among the Framers, enacted a statute (1 Stat. 282) which authorized a commission consisting of the President of the Senate, the Chief Justice, the Secretary of State, the Secretary of the Treasury and the Attorney General "to purchase the debt of the United States, at its market price, if not exceeding the par or true value thereof . . . ."

The same Congress passed a Succession Act (1 Stat. 240) providing that "in case of removal, death, resignation or inability both of the President and Vice President of the United States, the President of the Senate pro tempore, and in case there shall be no President of the Senate, then the Speaker of the House of Representatives for the time being shall act as President of the United States until the disability shall be removed or a President shall be elected"—thus exercising the power of appointment by designating the occupant of an office.[21]

Also in 1792 the House of Representatives assumed authority to create and staff an investigating committee with power to "call for such persons, papers and records as may be necessary to assist their inquiries." [22]

20. See "Standing Rules, Joint Rules and Orders for Conducting Business in the House of Representatives" (G. P. O., 44th Cong. 1st Sess.), note accompanying para. 10.

21. *See also* the Succession Act of 1886, 24 Stat. 1.

22. 3 Annals of Congress 490-494. The investigation related to the recent disaster suffered by the army in the northwest.

Although the Constitution contains no express provision authorizing Congress to make investigations and exact testimony—much less to appoint investigators—a broad power to conduct investigations through legislators and their appointees had been frequently exercised by the British Parliament and the colonial

Congress has designated those who are to serve as members of various quasi-public associations or corporations, *e.g.*, the Washington National Monument Society (11 Stat. 386), the National Military and Naval Asylum (13 Stat. 509), the American Printing House for the Blind (20 Stat. 467), the American Historical Association (25 Stat. 640), the Carnegie Institution (33 Stat. 575) and the American National Red Cross (33 Stat. 599).

In various contexts, it has appointed individuals to serve in public employment or office, *e.g.*, Morse to oversee experiments with telegraph (5 Stat. 618); regents of the Smithsonian Institution appointed by Joint Resolution (a practice instituted in 1846, 9 Stat. 115, and continued thereafter); managers of the National Asylum appointed by Joint Resolution (a practice instituted in 1867, 15 Stat. 1, and continued thereafter); Green to supervise the Library of Congress, 29 Stat. 470; Colum to be Commissioner of the Lincoln Memorial, 37 Stat. 731; Goethals to investigate designated claims, 38 Stat. 388; the President to send a named person to Alaska to construct a territorial railroad, 38 Stat. 772. In innumerable instances Congress has directed the President to appoint a named person to a particular military rank. See *Wood v. United States,* 107 U. S. 414.

As noted above, as early as 1792 Congress appointed a commission which performed an administrative or quasi-executive task: the purchase of outstanding instruments of debt. There have been numerous similar instances in which quasi-executive or quasi-judicial duties, as well as rule-making or recommendatory functions, have been per-

22. (Cont'd.)
assemblies, and was assumed by Congress without apparent doubt or debate. *See generally,* Landis, "Constitutional Limitations on the Congressional Power of Investigation", 40 Harv. L. Rev. 153 (1926).

formed by a committee, commission or board whose membership has been designated in whole or in part by the Congress (in some instances designating them by name; in others, by their office). The following are illustrative: Territorial governor and judges to lay out a town (2 Stat. 398); the Attorney General and the Secretaries of War, Treasury and Navy to be commissioners of hospitals (2 Stat. 650); the head of Indian tribes in Wisconsin to adjust land claims (5 Stat. 349); designated local officials of the City of Detroit to adjust land claims (5 Stat. 541); designation of members of a board of commissioners to equalize salaries of United States officers (12 Stat. 283); designation of individuals to select a site for a post office (15 Stat. 250) or prison (15 Stat. 282); designation of a commission to negotiate with hostile Indians and make treaty stipulations subject to action of the Senate (15 Stat. 17); designation of members of the National Forest Reserve Commission authorized to locate lands for purchase and to fix prices to be offered by the Secretary of Agriculture therefor (36 Stat. 961); designation of the members of a committee to expend appropriated sum for use of Civil War veterans (38 Stat. 237); designation of a Vocational Educational Board with authority to determine the adequacy of State plans for utilizing federal funds (39 Stat. 929); designation of an aircraft board to establish policies and standards for purchase of aircraft and other equipment (40 Stat. 296); the Federal Power Commission to consist of the Secretaries of War, Interior and Agriculture (41 Stat. 1063); designation of members of the National Capital Park and Planning Committee (45 Stat. 420).

It is also notable that for many years Congress has followed the practice of sharing with the President the responsibility for appointing members to commissions en-

gaged in fact gathering, study, research and the preparation of plans and legislative recommendations. The instances are so numerous that we confine ourselves to some examples from the last decade: Select Commission on Western Hemisphere Immigration (79 Stat. 920); Commission on Political Activity of Government Personnel (80 Stat. 868); National Commission on Reform of Federal Criminal Laws (80 Stat. 1516); National Commission on Consumer Finance (82 Stat. 164); National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance (82 Stat. 223); National Advisory Commission on Low Income Housing (82 Stat. 497); Commission on Bankruptcy Laws of the United States (84 Stat. 468); National Commission on Individual Rights (80 Stat. 960); Commission to Review National Policy Toward Gambling (84 Stat. 938); Commission on Marihuana and Drug Abuse (84 Stat. 1280); Commission on the Organization of the Government for the Conduct of Foreign Policy (86 Stat. 496).

III.

Congress' Fundamental Constitutional Role in the Conduct of the Federal Electoral Process Embraces, in Addition to Its Legislative Power, the Performance of Quasi-Judicial and Quasi-Executive Functions.

In this section of the brief, we note initially the various sources of Congress' constitutional powers in relation to the federal electoral process. We then indicate the breadth and character of its legislative authority—a matter presumably not in dispute but one which sheds light upon the extent of Congress' auxiliary powers to do what is "necessary and proper." We examine, next, the judicial duties with which it is charged. Finally, we examine the administrative or quasi-executive functions that are appropriate to carrying out the foregoing and how Congress has traditionally performed those functions through its own delegates, with particular emphasis upon the administration of antecedent corrupt practices and federal financing legislation.

A. In addition to the general legislative powers vested in it by the Constitution (Art. I, § 1), Congress has enumerated responsibilities bearing on the conduct of federal elections.

Article I, Section 4, cl. 1, provides:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

Article I, Section 5, declares that "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members . . . ." It states further that each House may "punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member." [23]

So far as Presidential elections are concerned, the Twelfth Amendment to the Constitution provides that the certificates of the votes of the electoral college shall be transmitted sealed to the seat of government, "directed to the President of the Senate," and that the "President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted." (Analogous provisions were orig-

23. This, of course, includes the power to expel for fraud in obtaining election or for corruption of the electoral process. See *Powell v. McCormack*, 395 U. S. 486, 558-559 (concurring opinion of Mr. Justice Douglas).

inally within Art. II, § 1, cl. 3.) It was in execution of this responsibility to judge the *bona fides* of returns that Congress devised the procedures (discussed *infra*) utilized in adjudicating the disputed Hayes-Tilden contest of 1876.[24]

Congress additionally has the authority to implement by legislation the provisions of the Fourteenth and Fifteenth Amendments (an authority not implicated in the present case) and the powers conferred by the "necessary and proper" clause.

B. Congress' power to regulate the times, places and manner of holding elections has been broadly interpreted and widely implemented. In Chief Justice Hughes' words, speaking for a unanimous Court in *Smiley v. Holm*, 285 U. S. 355, 366, "[i]t cannot be doubted that these comprehensive words embrace authority to provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns . . . ."[25]

24. For present purposes, we shall not elaborate upon the procedures prescribed by the Amendment if no candidate has a majority of the electoral votes and the choice is thrown into the House.

25. Throughout most of our history, Congress has left the actual conduct of federal elections in the hands of State officials, though subject to federal standards, requirements and sanctions. The principal exceptions were during the Reconstruction Era. Thus the Supplemental Reconstruction Act of March 23, 1867, 15 Stat. 3, provided that the commanding generals of the military districts embracing the former Confederate States should assume control of registration and elections in their areas. More broadly, Congress provided in 1870 and 1871 that, upon citizens' petition, the judges of the United States Circuit Courts should appoint supervisors to oversee registration and polling in connection with any election at which representatives or delegates to Congress are to be chosen. The relevant provisions are set forth in *Ex parte Siebold*, 100 U. S. 371, which upheld the exercise of this appointive

Subsequently, in *United States v. Classic*, 313 U. S. 299, 318, the Court ruled that Congress' power to safeguard the integrity of elections extends to primary elections where "the state law has made the primary an integral part of the procedure of choice, or where in fact the primary effectively controls the choice . . . ."

While it is true that Article II, § 1, commits the power of appointment of Presidential electors and the manner of their appointment to the States, there is no question of the power of Congress "to preserve the purity of presidential and vice presidential elections" as well as of Congressional elections. *Burroughs v. United States*, 290 U. S. 534, 544.[26] "To say that Congress is without power to pass appropriate legislation to safeguard such an election from the improper use of money to influence the result is to deny to the nation in a vital particular the power of self protection. Congress, undoubtedly, possesses that power, as it possesses every other power essential to preserve the departments and institutions of the general government from impairment or destruction, whether threatened by force or by corruption." *Id.* at 545.[27]

25. (Cont'd.)
power by members of the judiciary (see discussion *infra*). The 1870-71 legislation remained in effect for a total of eleven Congressional elections before its repeal in 1894. *See generally*, Burke, Federal Regulation of Congressional Elections in Northern Cities, 1871-1894, American Journal of Legal History, v. XIV, pp. 17-34.

Where State officials supervise elections at which national officers are also being chosen, the officials are of course "amenable to both" sovereigns for the performance of their duties (*Ex parte Siebold, supra*, at 389). Insofar as their actions touch upon the federal electoral process, they are seen as Congress' officers and subject to the sanctions it has provided. *In re Coy*, 127 U. S. 731, 752-3.

26. *Burroughs* involved an indictment under the Federal Corrupt Practices Act of 1925, discussed *infra*.

27. On Congressional power over Presidential elections, *see, also, Ex parte Yarborough*, 110 U. S. 651, 657-8, 666-7; *Oregon v. Mitchell*, 400 U. S. 112, 123-4 (opinion of Justice Black); and the

Finally, of course, it is part and parcel of the legislative power to secure such information and data as is necessary or useful in the performance of the legislative role—a point we discuss more fully *infra* in connection with the delegation to the Election Commission of information-gathering functions.

C. The performance of judicial duties by the Congress is necessitated in part by the direction that each House shall pass upon the elections, returns and qualifications of its own members as well as by the provision governing the expulsion of members. Thus, in *Reed v. County Commissioners*, 277 U. S. 376, in adverting to the power of a Senate Committee to take ballots and ballot boxes from State officials in order to investigate the "means used to influence the nomination of candidates for the Senate" (p. 386), the Court reasoned that the Senate, as "judge of the elections, returns and qualifications of its members" is "fully empowered, and may determine such matters without the aid of the House of Representatives or the Executive or Judicial Department" (p. 388). "By means of its own process or that of its committee . . . [it has] authority to take such steps as may be appropriate and necessary to secure information upon which to decide concerning elections" (*ibid.*). The Court noted further that "Congress has passed laws calculated to facilitate such investigations" (*ibid.*).

In a case arising at a later stage of the same Senatorial inquiry, the Court ruled that exercise of the Senate's powers as the judge of elections "necessarily involves the ascertainment of facts, the attendance of witnesses, the examination

27. (Cont'd.)
opinions of the three-judge district courts in *United States v. Manning*, 215 F. Supp. 272, 283-9 (W. D. La., 1963) and *United States v. Original Knights of Ku Klux Klan*, 250 F. Supp. 330, 350-5 (E. D. La., 1965).

of such witnesses, with the power to compel them to answer pertinent questions, to determine the facts and apply the appropriate rules of law, and, finally, to render a judgment . . . ." *Barry v. United States ex rel. Cunningham*, 279 U. S. 597, 613.[28] *See also In re Loney*, 134 U. S. 372; *In re Chapman*, 166 U. S. 661.

Congress' role in a contested Presidential election is vividly illustrated by the events of 1876, when conflicting electoral returns were received from a number of States. In lieu of determining the contest itself, Congress passed a statute creating an electoral commission to which it delegated its investigatory and adjudicatory functions (19 Stat. 227). The judgment of the Commission was to be binding unless overridden by both Houses.[29] The membership of the Commission was prescribed by the statute and was to consist of five Representatives appointed by the House, five Senators appointed by the Senate and the Associate Justices of the Supreme Court assigned to the First, Third, Eighth, and Ninth Circuits. The four Justices were then to appoint a fifth Associate Justice to complete the Commission of Fifteen.

D. As observed above, Congress has plenary legislative power to establish regulations governing the federal electoral process. It also has the responsibility to judge elections, returns and qualifications—a role which includes the authority to engage in such administration, fact-gathering and investigation as may be appropriate to the making

28. The House of Representatives has long had detailed rules, analogous to the Federal Rules of Civil Procedure, as to the procedures to be followed in cases of contested elections. The current rules are codified in 2 U. S. C. §§ 381-396. Earlier rules were codified in 2 U. S. C. § 201 *et seq.*

29. The practical effect was to make the Commission's determination final since one major party dominated the Senate and the other the House. *See generally*, Haworth, "The Hayes-Tilden Disputed Presidential Election of 1876" (Russell & Russell, 1966 ed.).

of its judgments. There is no reason, however, to confine these auxiliary powers to a situation in which the dispute has crystallized and a challenge has already been presented. Thus, the responsibility to pass on qualifications carries with it the authority to impose and administer *ongoing* requirements calling for the disclosure and production of such information as may be relevant to qualification. Such requirements are but prophylactic measures to assure compliance with the law and to minimize the areas and instances of dispute. The same is of course true of Congress' responsibility to deal with corruption or with fraud upon the electoral process.

It is true, to be sure, that the administration of ongoing requirements to report and disclose information that will reveal compliance or failure of compliance with the law may fairly be characterized as a quasi-executive function. The point, however, is that it is intimately related to Congress' ultimate responsibilities—responsibilities that go well beyond a purely legislative role.

That the nature of the business to be conducted may justify, if not require, some blending of the rule-making, adjudicatory and administrative functions is hardly a novel concept in a society which has long conducted much of its vital business through boards and commissions. *Cf. Humphrey's Executor v. United States,* 295 U. S. 602.[30]

30. Speaking of the Federal Trade Commission and holding that the President does not have "illimitable power of removal" over its members (p. 629), the *Humphrey's* Court stated (p. 628):

> Its duties are performed without executive leave and, in the contemplation of the statute, must be free from executive control. In administering the provisions of the statute in respect of "unfair methods of competition"—that is to say in filling in and administering the details embodied by that general standard—the commission acts in part quasi-legislatively and in part quasi-judicially. In making investigations and reports thereon for the information of Congress under § 6, in aid of the legislative power, its acts as a legislative agency. Under § 7, which authorizies the commission to act as a master in chancery

Indeed, as early as Justice Story's day, it was observed that the concept of separation of powers is far from an absolute. "It is not meant to affirm that they [the three departments of government] must be kept wholly and entirely separate and distinct . . . . The true meaning is, that the whole power of one of these departments should not be exercised by the same hands which possess the whole power of either of the other departments. . . ." Story, "Commentaries on the Constitution," § 525.[31]

An examination of Corrupt Practices legislation antecedent to the 1974 legislation at issue in this case (to which we now turn) shows that Congress and its agents have long exercised functions of the very kind and description that have now been delegated to the Federal Election Commission.

E. In creating the Federal Election Commission, the Federal Election Campaign Act Amendments of 1974 delegate responsibilities to it in three main areas of congressional regulation of federal election campaigns: (1) The

30. (Cont'd.)

> under rules prescribed by the court, it acts as an agency of the judiciary. To the extent that it exercises any executive function—as distinguished from executive power in the constitutional sense—it does so in the discharge and effectuation of its quasi-legislative or quasi-judicial powers, or as an agency of the legislative or judicial departments of the government.

31. In *Springer v. Philippine Islands,* 277 U. S. 189, upon which appellants rely, the Court ruled (Justices Holmes and Brandeis dissenting) that the Philippine Legislature violated the executive powers exclusively conferred upon the Governor General when it passed legislation taking from him control of the appointment of directors of two government corporations (the Philippine National Bank and the Philippine Coal Company) and placing legislators on the two boards. As noted by the court below, however, the *Springer* holding was rested on the premises that the legislation was not "incidental to the powers conferred" upon the Legislature (p. 201), nor "in aid of the performance" of its functions (p. 202). Note, also, that the proceedings in *Springer* were in the nature of *quo warranto* and were brought by the Government to oust the challenged directors. See Point I, *supra.*

Commission is given broad supervisory authority over administration of the reporting and disclosure requirements for political contributions and expenditures in federal elections contained in the Federal Election Campaign Act of 1971, as amended, 2 U. S. C. §§ 431 *et seq.*; (2) The Commission also plays an important role in the administration of the provisions for public financing of Presidential primary and election campaigns contained in the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act, 26 U. S. C. §§ 9001 *et seq.*, 9031 *et seq.*; (3) The Commission has a limited role in the administration of the limitations on contributions and expenditures contained in Chapter 29 of the Criminal Code, 18 U. S. C. §§ 608 *et seq.*[32]

Appellants urge that the delegation of some or all of these functions to a body chosen in part by the leadership of the Houses of Congress violates the constitutional separation of powers. They suggest that only members of the Executive Branch of the Government, nominated and appointed pursuant to Article II, Section 2 of the Constitution, may exercise the functions which Congress has given to the Election Commission. In this portion of the brief we show that, quite to the contrary of appellants' argument, Congress has in the past assigned the functions now given to the Commission not to Executive Branch officers and agencies, but to officers and arms of the Legislative Branch.

32. In addition to these three main areas of responsibility, the Commission is directed to be a general clearinghouse for information relating to the administration of elections and is specifically empowered to contract for studies into the administration of elections and to publish such studies. 2 U. S. C. § 438(b). In view of the extensive and heretofore unchallenged practice, summarized *supra*, of congressional appointment of federal study commissions, we assume that no substantial constitutional question is presented with respect to this activity.

1. The earliest examples of congressional statutory regulation of the federal election process did not, for the most part, involve separate administrative or enforcement machinery. The Enforcement Act of 1870, 16 Stat. 144, the constitutionality of which was upheld in *Ex parte Siebold, supra,* 100 U. S. 371, made criminal certain designated election practices, including voting fraud and other interference with the free exercise of the franchise.[33] The Tillman Act of 1907, 34 Stat. 814, was the first modern exercise of congressional power to regulate contributions in election campaigns. Banks and corporations were prohibited from making any monetary political contributions in federal election campaigns. Criminal sanctions were utilized and no separate administrative or enforcement mechanism was established. The Tillman Act was broadened and incorporated into subsequent legislation. See 35 Stat. 1088 (1909), 57 Stat. 163 (1943) and the Taft-Hartley Act, 61 Stat. 136, 159 (contributions by organized labor), and the Corrupt Practices Act of 1925, *infra.*

2. When Congress in the Corrupt Practices Act of 1910, 36 Stat. 822, first attempted a comprehensive regulation of campaign contributions and expenditures in federal elections, it utilized a legislative officer—the Clerk of the House of Representatives—to administer the regulatory system. The duties of the House Clerk under the 1910 Act were similar to those duties of the present Election Commission relating to the reporting and disclosure requirements of 2 U. S. C. §§ 431 *et seq.* Under the 1910 Act, political committees were required to keep records of all contributions and expenditures and to file the records with the Clerk of the House after the election. The Clerk

33. As noted above (p. 22, note), the 1870 legislation did provide that in certain circumstances federal judges might appoint election supervisors. See, also, the discussion of *Ex parte Siebold, infra,* p. 68.

was to make the filings available to the public. Certain campaign contributors were also required to file reports with the Clerk. Criminal penalties were provided for improper filing.

One year after its initial passage, the 1910 Act was broadened to include primary elections in its coverage, to require the filing of records of contributions by candidates as well as by political committees, and to impose spending limitations on both House and Senate election campaigns. 37 Stat. 25 (1911). The date for filing required records of contributions and expenditures was advanced so as to require receipt before the relevant election, and a second legislative officer—the Secretary of the Senate—was brought into the process of administering the reporting and disclosure requirements. Aspects of the 1910 Act, as amended, were upheld over constitutional objections in *United States v. Classic*, 313 U. S. 299.

3. The Corrupt Practices Act of 1925, 43 Stat. 1070, elaborated the reporting and disclosure requirements of the 1910 Act, which it replaced, re-imposed expenditure limitations in House and Senate campaigns, and re-enacted the Tillman Act prohibitions on contributions by certain types of entities. Again, the Clerk of the House and the Secretary of the Senate administered the system of required filings of reports of contributions and expenditures. The number of required filing dates for political committees was increased to five pre-election filings as well as a post-election summary. Candidates were required to file records of contributions and expenditures with the appropriate legislative officer once before and once after each election, and certain contributors were also made subject to these filing and disclosure requirements. In *Nader v. Kleindienst*, 375 F. Supp. 1138 (D. D. C. 1973), *aff'd*, 497 F. 2d 676 (D. C. Cir. 1974), the court held that the 1925

Act imposed no affirmative *duty* on the Clerk of the House or the Secretary of the Senate to refer violations of the Act to the Attorney General for criminal prosecution, but the court assumed that the Clerk and Secretary had the power to make such referrals. See, also, *United States v. Foote*, 42 F. Supp. 717 (D. Del. 1942), upholding the constitutionality of the 1925 Act.

4. Federal financing of Presidential election campaigns was first provided for in the Presidential Election Campaign Fund Act of 1966, 80 Stat. 1957, which established a fund to receive the proceeds of a one-dollar federal income tax checkoff system. Disbursements were to be made from this fund to political parties by the Secretary of the Treasury. However, Congress vested significant administrative and enforcement powers with respect to the federal financing system—functions similar to those vested in the Election Commission under the 1974 Act—in non-Executive Branch officers. The Comptroller General was given the function (exercised by the Commission under the 1974 Act) of certifying to the Secretary of the Treasury what amounts were due to be paid from the fund and to whom. The Comptroller General was also explicitly given rule-making and investigatory powers in connection with his certification function. In addition, § 304 of the 1966 Act created the Presidential Election Campaign Fund Advisory Board to "counsel and assist" the Comptroller General in performance of these duties. Four members of this Board were to be appointed by the Comptroller General—two from each major party on the recommendation of that party. Three additional Board members were to be appointed by the four members recommended by the political parties. Implementation of public financing under the 1966 Act was delayed by Congress pending its adoption of legislative guidelines. 81

Stat. 57. Such guidelines were not enacted until passage of the Presidential Election Campaign Fund Act of 1971, *infra*, which replaced most of the 1966 Act.

5. The Presidential Election Campaign Fund Act of 1971, 85 Stat. 560, substituted for the 1966 Act a more comprehensive system for the public financing of Presidential election campaigns. As in the 1966 Act, the Comptroller General was responsible for certification of entitlement to payments.[34] He was to be assisted by an Advisory Board similar to the one created under the 1966 Act, except that the membership of this Board was expanded to include, in addition to nominees of the political parties and their nominees, the two major party leaders in each House of Congress (as *ex officio* members of the Board). The 1971 Campaign Fund Act required at least five pre-election reports to be filed with the Comptroller General; it gave the Comptroller General general investigatory and record keeping powers (§ 9009), as well as the specific duty to audit and examine campaign expenses (§ 9007); and it provided criminal penalties for violating reporting requirements or exceeding specified expenditure and contribution limitations (§ 9012). The Comptroller General was given broad rulemaking authority to implement the Act (§ 9009) and regulations were issued by him, see 11 C. F. R. 1.1 *et seq.* (1974). In addition, § 9010 of the 1971 Campaign Fund Act gave the Comptroller General the independent power to institute suit seeking injunctive relief to enforce the Act, the power to sue to recover overpayments, and the power to defend his actions on appeal. The Comptroller General's duties under the 1971 Campaign Fund Act were thus essentially similar to the Elec-

34. Payments were never made under the 1971 Campaign Fund Act because the Act was not made applicable to the 1972 Presidential election and it has since been superseded by the 1974 Act at issue in this case.

tion Commission's duties under the public financing provisions of the 1974 Act, and these duties were, indeed, expressly transferred to the Commission by the 1974 Act, § 404 of the Act, 88 Stat. 1292-93 (to be codified at 26 U. S. C. § 9001 *et seq.*).

6. A second 1971 statute, the Federal Election Campaign Act of 1971, 86 Stat. 3, dealt, not with public funding of Presidential campaigns, but with the subjects covered by earlier corrupt practices legislation. Superseding the Corrupt Practices Act of 1925, it added to prior corrupt practices legislation in three main ways: It established limits on broadcast media spending by candidates; it amended the Criminal Code (18 U. S. C. § 608) to provide for limitations on the amounts that candidates for federal office could spend from personal family resources; and it broadened the disclosure requirements for campaign-related contributions and expenditures. Primary responsibility for administration and enforcement of the 1971 Act was placed in three "supervisory" officers—the Clerk of the House of Representatives (for matters related to House campaigns), the Secretary of the Senate (for matters related to Senate campaigns) and the Comptroller-General (for matters related to Presidential elections). Duties of these supervisory officers included comprehensive supervision of the reporting and filing requirements; auditing and field investigations; general rulemaking authority in the realm of required reports; receiving and investigating complaints and recommending to the Attorney General in appropriate cases the institution of civil (§ 308(d)(1)) or criminal (§ 311) proceedings. In addition, the Comptroller General was given authority to make interpretative rules relating to the media spending limitations and was designated to act as a national clearinghouse for electoral information. The 1974 Act which is at issue in this case

explicitly transferred the duties of the supervisory officers under the 1971 Act to the Federal Election Commission, § 208(c) of the Act, 88 Stat. 1286 (to be codified at 2 U. S. C. 431 *et seq.*).

To summarize the foregoing history: In statutes prior to the 1974 FECA Amendments, Congress repeatedly delegated administrative and enforcement responsibilities in connection with reporting and disclosure requirements for election expenditures and contributions, in connection with public funding of Presidential election campaigns, and in connection with limitations on permissible election expenditures and contributions. Except for the authority to institute criminal prosecutions, which has always resided in members of the Executive Branch (and which continues so to reside under the 1974 Act), these delegations vested responsibilities, not in *executive* officers and agencies, but in *legislative* officers or agencies. Functions similar to those presently exercised by the Federal Election Commission have previously been performed by the Secretary of the Senate, the Clerk of the House of Representatives, advisory boards selected outside of the provisions of Article II, § 2 of the Constitution, and by the Comptroller General.

The Comptroller General and the General Accounting Office, we emphasize, are "a part of the legislative branch of the Government." Reorganization Act of 1949, § 7, 63 Stat. 205. Appointed for a fifteen year term (31 U. S. C. § 43), the Comptroller is "independent of the executive departments" (31 U. S. C. § 41) and may be removed only by joint resolution of Congress or by impeachment (31 U. S. C. § 43).[35] Congress may act through him as it would through its own committees. *United States v. Stewart,* 234 F. Supp. 94, 99 (D. D. C.), aff'd, 339 F. 2d 753 (D. C. Cir.

35. See, also, 31 U. S. C. 65(d) (noting that the Comptroller performs his auditing functions "as an agent of the Congress").

1964). *See also,* Schwartz and Jacoby, "Litigation With The Federal Government" (1970), p. 161; Mansfield, "The Comptroller General" (1939), pp. 247-8.

Throughout the lengthy history of close Congressional regulation of the financial aspects of federal election campaigns no one, it appears, has previously seen fit to challenge, as a violation of the Constitutional separation of powers, the delegation of administrative and non-criminal enforcement responsibilities in this area to legislative officers and agencies. A number of cases have considered constitutional attacks on aspects of the prior legislation, but in none is there a suggestion of any impropriety by virtue of the delegation of authority to legislative officials. See *Burroughs v. United States,* 290 U. S. 534 (upholding requirement of reporting contributions to the Clerk of the House); *Rumely v. United States,* 197 F. 2d 166, 187 (D. C. Cir. 1952), *aff'd,* 345 U. S. 41 ("no one would seriously contend that the requirements for disclosure under the [1925] Corrupt Practices Act are offensive to the Constitution"); *United States v. Harris,* 347 U .S. 612 (upholding the Federal Regulation of Lobbying Act, 2 U. S. C. §§ 261-270, under which the defendant was charged with failure to report lobbying expenditures to the Clerk of the House); *Pichler v. Jennings,* 347 F. Supp. 1061 (S. D. N. Y. 1972) (challenge to provisions of 1971 Federal Election Campaign Act requiring disclosure of contributors); *United States v. National Committee for Impeachment,* 469 F. 2d 1135 (2d Cir. 1972) (challenge to reporting requirements of 1971 Federal Election Campaign Act); *ACLU v. Jennings,* 366 F. Supp. 1041 (D. D. C. 1973), appeal dismissed as moot, 95 S. Ct. 2646 (1975) (same); *Nader v. Kleindienst,* 375 F. Supp. 1138 (D. D. C. 1973), *aff'd,* 497 F. 2d 676 (D. C. Cir. 1974) (power of House Clerk and Senate Secretary to refer violations of Corrupt Practices Act for prosecution); *United States v. Finance Committee to Re-*

Elect the President, 507 F. 2d 1194 (D. C. Cir. 1974) (affirming conviction for failure to report under 1971 Federal Election Campaign Act).

IV.

The Specific Functions Entrusted to the Federal Election Commission Are Duties Which Can Constitutionally Be Delegated to Officers Serving as an Arm of the Legislature and Appointed in Part by the Congress.

As noted above, the functions delegated by Congress to the Federal Election Commission are of three principal types: (1) supervision of the reporting and disclosure requirements relating to contributions and expenditures in federal elections; (2) duties in connection with federal financing of Presidential primaries and election campaigns; and (3) duties in connection with limits imposed on permissible contributions and expenditures in federal elections. We here describe these functions in some detail and show how, as to each type of function, the duties delegated are appropriately vested in a Commission serving as an arm of the legislature. After describing the duties of the Commission in the context of the Congressional scheme, we deal further, and more specifically, with various objections raised by appellants with respect to the delegation of particular powers to the agency.

If the FEC were an agency performing a dominantly executive role, we assume that its full membership would be required to be appointed under the provisions of Article II. The fundamental point of this aspect of the current litigation, however, is that the Commission serves not in a dominantly executive capacity, but as an immediate arm of the Congress. It performs functions which the Congress could perform itself or through its legislative committees or staff. These functions are directly related to and in aid

of continuing congressional responsibility over the federal electoral process. In these circumstances, Congress may, we submit, select the individuals who perform these delegated tasks, just as it may select committee chairmen, committee staff personnel, the House Clerk and the Senate Secretary. The Executive has no constitutional prerogatives in the selection of personnel, such as the members of the Federal Election Commission, whose primary task is to aid Congress in the performance of its responsibilities.

A. Duties in Connection With Reporting and Disclosure of Contributions and Expenditures.

One of the Commission's primary roles under the 1974 Act is to act as Congress' delegate in supervising the gathering of extensive information relating to the financing of federal election campaigns. Under the Act, the Commission is designated as the recipient, on behalf of Congress, of a variety of statements and reports relating to contributions and expenditures in federal election campaigns. (In the case of reports and statements required to be filed by candidates for the House and Senate, the filings are initially to be made with the Clerk of the House of Representatives and the Secretary of the Senate, respectively, but these officers receive such filings as "custodian" for the Commission. See 2 U. S. C. § 438(d).) The information thus required to be filed with the Commission includes statements of organization of political committees (2 U. S. C. § 433); reports of receipts and expenditures by political committees and candidates (§ 434); reports from certain contributors to political campaigns (§ 434(e); § 437(a)); and statements relating to the financing of, and expenditures in connection with, Presidential nominating conventions (§ 437).

The Commission's affirmative duties in connection with reports of election contributions and expenditures

are closely related to its function as the gatherer of election financing information sought by Congress. With regard to the reporting and filing process itself, the Commission is to develop and furnish the forms on which reports and statements are to be made (§ 438(a)(1); § 434); to make rules for the reporting of unusual items such as petty cash disbursements (§ 437b(b)) and debts and promises to contribute (§ 436(c)); to prepare a manual setting out uniform methods of bookkeeping and reporting to be used in the filing process (§ 438(a)(2)); to develop indexing systems for the filed material (§ 438(a)(3)(6)); to preserve reports and statements filed with it and to make them available to the public (§ 438(a)(4)(5)); and to designate the period of time for which persons must preserve copies of filed reports and statements (§ 436). In order to insure the integrity of the information-gathering system the Commission is required to perform audits and field investigations with respect to filed reports and possible failures to file required statements or reports (§ 438(a)(8)). It must also determine the periods of time during which receipted bills and accounts must be preserved (§ 432(d)); and it is to make rules for the establishment of campaign depositories by Presidential candidates (§ 437b(c)). To provide needed, although limited, flexibility in the reporting system, the Commission is empowered to waive certain filing dates and requirements (§§ 434(a)(3); 436(b)), and it may render advisory opinions with respect to the meaning of the filing requirements as applied to specific transactions or activities so as to protect persons who, in good faith, attempt to comply with those requirements (§ 437f).

In addition to its auditing functions, the Commission has a further role in seeking compliance with the information-gathering system that Congress has established. The Commission is to receive complaints of violations of the filing and reporting requirements and is either to investigate these itself (through hearings or otherwise) or refer apparent violations directly to the Attorney General (§ 437g). If the Commission investigates an alleged violation and determines that applicable reporting requirements have not been or are not being complied with, it may attempt to correct the default through conciliation (§ 437g(a)(5)). If these methods fail, the Commission may institute a civil action for injunctive or other relief to correct such violations (§ 437g(a)(5)). Alternatively, it may ask the Attorney General to institute such a civil action (§ 437g(a)(7)), and the Commission is further directed to refer apparent violations of criminal provisions to the appropriate law enforcement authorities (§ 437g(a)(6)). As an "additional enforcement authority" the 1974 Act provides that a Commission determination, after notice and hearing, that a candidate for federal office has failed to file a required report, has the effect of disqualifying the candidate for election to federal office for a limited period. As with all other Commission determinations of violation of the filing requirements, such a Commission finding is subject to judicial review (§ 456).

Although the Commission is given the general power to formulate rules for the proper effectuation of the reporting and disclosure requirements of the 1974 Act (§§ 438d; 437(a)(8)(9)), such rules cannot be finally promulgated by the Commission itself. In recognition of the Commission's role as the agent of Congress, proposed rules formulated by the Commission must be transmitted to the Congress and may take effect only if not disapproved by either House within thirty legislative days (§ 438). The Commission is also obliged to make annual reports to each House of Congress and to the President concerning its activities in carrying out its duties, together with recommendations for legislative or other action it deems appropriate.

As shown in Point E of the preceding section of this brief, there is direct historical precedent for vesting virtually all of the above-described duties relating to the information-gathering process in officers or arms of the Congress rather than in executive or quasi-executive officials chosen under the appointment provision of Article II, Section 2 of the Constitution. Thus, the Clerk of the House and the Secretary of the Senate have been the designated recipients and custodians of reports relating to election financing and expenditures since the Corrupt Practices Act of 1910. The power to refer violations of reporting requirements for prosecution was apparently assumed to rest in the Clerk and the Secretary, at least since the 1925 Corrupt Practices Act. See *Nader v. Kleindienst, supra.* Under the 1971 Federal Election Campaign Act the designated "supervisory officers" were the Clerk, the Secretary, and the Comptroller General. These legislative officers had, in addition to their functions under prior legislation, the power to make audits and field investigations, to receive and investigate complaints, to recommend the institution of civil or criminal proceedings, and to make rules relating to the required reports and filings. While the supervisory officers did not themselves have the power under the 1971 Campaign Act to institute civil actions to obtain compliance with the Act, such power was vested in the Comptroller General under the 1971 Presidential Election Campaign Fund Act, which also contained reporting requirements regarding expenditures and contributions.

Aside from the historical precedents, there is ample basis to conclude that Congress may appropriately vest information-gathering duties relating to the financing of federal elections in its own delegates. Such information is directly related to two constitutional functions of Congress—that of formulating legislation governing the federal election process and that of judging the elections and qualifications of its own members and of supervising the legitimacy of the returns in Presidential elections. Under Article I, Section 8 of the Constitution, Congress may enact "all Laws which shall be necessary and proper for carrying into Execution" these functions. The gathering of comprehensive and accurate information about election financing is quite obviously both relevant and necessary to the continuing legislative oversight which Congress, through repeated corrupt practices and campaign funding legislation, has exercised over the federal electoral process. The legislative process can hardly be properly informed without the availability of such information, and Congress plainly has the power to gather the required data, if necessary by compulsory process. *Sinclair v. United States,* 279 U. S. 263; *Hutcheson v. United States,* 369 U. S. 599. With regard to Congress' adjudicatory role over election returns and the qualifications of its members, the information gathered by the Election Commission serves both to deter fraudulent practices which would be a basis for disqualification and to provide a basis for disqualification itself (or for expulsion) when the filed information shows a violation of laws regulating financial campaign practices. As to the undoubted power of Congress to gather information—independently of the Executive—for its adjudicative purposes, see *Reed v. County Commissioners, supra,* 277 U. S. at 388, recognizing the Senate's authority, "by means of its own process or that of its committee . . . to take such steps as may be appropriate and necessary to secure information upon which to decide concerning elections." See also *Barry v. United States ex rel. Cunningham, supra; In re Loney, supra; In re Chapman, supra.*

An additional practical consideration of great weight supports Congress' partial use of its own delegates, rather than exclusive reliance upon Presidential nominees, to

gather information relating to its legislative and adjudicative roles in the federal electoral process. As recent events have shown, the President, both as head of his party and as candidate for his own re-election, not only has a distinctly partisan interest in election financing matters, but may even be implicated, either personally or through his own campaign staff, in actual wrongdoing or in suppression of information about federal campaign financing practices. The 1974 Act was passed by Congress in the shadow of these events. To say that Congress, in these circumstances, must rely exclusively upon Presidential nominees to secure information about federal election financing which it requires to perform its constitutional responsibilities would impair, rather than vindicate, the constitutional principle of separation of powers. The Election Commission, a bipartisan body nominated in equal parts by the President and the leadership of the two Houses of Congress, appears a plainly appropriate response to the distinct danger that partisan political bias may affect the accuracy and completeness of the information which Congress requires in order to perform its constitutional duties.[36]

36. To hold, as we urge the Court, that Congress has properly delegated broad information-gathering functions to a Commission selected in part by itself and in part by the President, would not of course foreclose all future separation-of-powers challenges to all aspects of the Commission's information-gathering role under the 1974 Act. While it seems clear that at least the vast majority of the Commission's information-gathering duties are properly vested in an arm of the legislature, particular functions, as specifically applied in concrete situations, may conceivably be so dominantly executive or judicial in nature as to raise more substantial questions. Such a contention might, for example, be raised as to a future exercise of the power of the Commission, under 2 U. S. C. § 456, to make determinations (subject, however, to judicial review) of filing violations which have the effect of disqualifying candidates from seeking federal office for limited periods of time. A challenge to this Commission function is obviously not ripe at the present time. Should such a challenge to a discrete Commis-

B. Duties in Connection With Federal Financing of Presidential Elections and Primary Campaigns.

The Federal Election Commission is the principal administrator of the system for federal funding of Presidential election and primary campaigns contained in Chapters 95 and 96 of the Internal Revenue Code, 26 U. S. C. §§ 9001 *et seq.* and 9031 *et seq.* (the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act). In general, the Commission's duties under this legislation are (1) to certify that only those who comply with the statutory conditions for eligibility receive funds in the statutorily prescribed amounts, and (2) to see that overpayments or improperly spent funds are returned to the Treasury. This is precisely the kind of function that the Comptroller General, a legislative officer, normally performs where federal disbursements are involved. We submit that, just as with the Commission's information-gathering functions relating to the financing of federal election campaigns, the task of monitoring disbursements authorized by Congress is one which may constitutionally be delegated to a body some of whose members are appointed by Congress rather than by the President. This is especially so, we believe, because the disbursements here are to be used to finance *Presidential* election and primary campaigns. In view of an incumbent President's potentially partisan role in such campaigns (whether or not he is himself a candidate for re-election), Congress, we believe, did not act inappropriately in reserving to itself the power to select (on a bipartisan basis) a portion of the body charged with insuring that the federal funds are properly allocated and spent.

36. (Cont'd.)
sion power ever prove successful in a justicable context the result would, of course, be to delete the particular improper exercise of power from the Commission's duties, rather than to void the entire delegation of preponderantly valid functions. Note, in this connection, the explicit separability provision contained in 2 U. S. C. § 454.

A principal function of the FEC under the Presidential election financing provisions is the duty of certifying candidates as eligible for receipt of federal funds. In order for a Presidential candidate to be eligible to receive such funds, he must agree in writing to furnish the Commission with evidence of his campaign expenses, to keep and furnish records, to submit to Commission audit, and to make any required repayments where necessary. 26 U. S. C. § 9003(a). Presidential candidates seeking federal financing must also certify to the Commission that they will not incur campaign expenses in excess of the amount of federal funding received and that they will not accept private financing. The Commission is to designate the time when such certification must be made (§ 9003 (b)(c)). If candidates submit the required agreements and certifications, the Commission is, in turn, to certify their eligibility for payment to the Secretary of Treasury, who is charged with the actual disbursement of the authorized funds (§§ 9005, 9006(c)). The Commission has no role in determining the amounts paid to eligibile candidates, such amounts being fixed by statute (§ 9004).

The 1974 legislation also provides for federal financing of Presidential nominating conventions and of Presidential primary campaigns. The Commission's certification duties with respect to these payments are similar to its duties relating to Presidential campaigns (§§ 9008(g), 9033, 9036, 9037).

Once payments of federal funds are made pursuant to the above provisions, the Commission has the responsibility of auditing the expenses of Presidential candidates and others who receive these funds (§§ 9007(a), 9008(g), 9009(b), 9038(a), 9039(h)), and may, to this end, require the keeping of appropriate records (§§ 9009(b), 9039(b)). If the Commission determines that any Presidential candidate received or spent more than was allowable under the applicable statutes, it is required to notify the recipient, who is under a duty to repay the improperly received or expended amounts to the Secretary of the Treasury (§§ 9007(b), 9008(h), 9038(b)). If repayment is not made, the Commission may institute suit to recover the amounts due the Secretary (§§ 9010(b), 9008(h), 9040(b)) and it may generally seek injunctive relief to compel compliance with the pertinent statutory requirements (§§ 9011, 9040(c)). Criminal sanctions are imposed for violations of the federal financing statutes (§§ 9012, 9042), but the Commission has no direct role in respect to the enforcement of these penalties.

As is the case with the information-gathering provisions of Title 2, U. S. C. (discussed in Section A of this part of our brief), the Commission has general rulemaking authority regarding the federal financing provisions for Presidential elections and primaries. Just as in the information-gathering area, however, such rules may only be proposed by the Commission. They become effective if not disallowed by either House of Congress within thirty legislative days (§§ 9009(c), 9039(b)). The Commission may waive certain expenditure limitations relating to nominating conventions when it determines that, due to extraordinary and unforseen circumstances, additional expenditures are necessary to ensure an effective convention (§ 9008(d)),[37] and it may render advisory opinions so as to protect persons who, in good faith, seek to comply with the statutory requirements (2 U. S. C. § 437f). The Commission is to make reports to the Congress of the

37. This provision has been narrowly (and, we believe, correctly) interpreted by the court below to refer to situations of emergency (such as a strike or breakdown of equipment) that require unanticipated measures in order to keep the convention functioning. J. S. 1580. So interpreted, the provision authorizing the allowance of additional expenditures to meet situations falling within this limited category easily withstands appellants' void-for-vagueness claim.

expenses incurred by Presidential candidates and parties, amounts certified by it for payment, and amounts required to be repaid (§§ 9009(a), 9038(a)).

As the above description shows, the Commission's function with regard to the federal financing of Presidential campaigns under the 1974 legislation is a ministerial and watchdog role. It certifies when candidates and parties have met the statutory requirements for eligibility for funds, it audits the accounts of those who receive funds, and it is charged with attempting to obtain repayment of improperly received or improperly spent funds. The Commission has no power to set policy regarding the extent or allocation of federal financing, these matters being fully prescribed by statute. The Commission's role in this area is thus quite similar to that exercised by the Comptroller General with regard to federal appropriations generally. The Comptroller General audits substantially all government accounts (see 31 U. S. C. §§ 41, 44, 60, 67) and certifies amounts for payment (31 U. S. C. §§ 47, 71, 72, 74). The Commission's role in enforcing repayment of overpaid or misspent amounts has precedent in the Comptroller's power to set off claims by the Government against persons seeking to recover from the United States, and to bring suit to enforce such set-offs (31 U. S. C. § 227).[38] Indeed, in the area of federal funding of Presidential elections, under the legislation immediately preceding the 1974 Act (The Presidential Election Campaign Fund Act of 1971 (discussed in Point III-E of this brief, *supra*)), the Comptroller General, assisted by an Advisory Board chosen outside the appointment provisions of Article II of the Constitution, exercised all the principal functions—including the duty to sue to recover overpayments and to seek injunctive relief—now vested in the Commission by the 1974 Act.

38. Under 31 U. S. C. § 227, if a private plaintiff obtains a judgment against the United States, and the Comptroller General determines that the holder of the judgment is, in turn, indebted to the Government on another matter, the Comptroller is authorized to withhold an amount equal to the debt to the Government and to institute suit for judicial confirmation of the set-off. The Comptroller General has also been accorded the power, under Section 1016 of the Impoundment Control Act of 1974, 88 Stat. 297, "through attorneys of his own selection," to bring suit in certain circumstances to compel executive officers to release impounded funds previously appropriated by Congress.

The line between those administrative functions which are so dominantly executive or quasi-executive that they may only be exercised by officials selected according to the appointment provisions of Article II, Section 2 of the Constitution, and those functions so related to the legislative role that they may be performed by legislatively selected officers acting as legislative agents is, as discussed in Point II of this brief, *supra*, necessarily indistinct at the fringes of the respective authorities. The Commission's functions of certifying payments, auditing accounts and recovering overpayments or misspent amounts fall within an area which appears to relate as closely to legislative as to executive duties. As the numerous instances of legislative selection of officials detailed in Point II of this brief indicates, Congress has in the past, in several instances at least, picked officers of its own choosing to administer the expenditures of congressionally appropriated funds, and in some of these cases the officers so selected have possessed a discretion as to amount and recipient of funds which the Election Commission here totally lacks. When one considers, as well, that the Comptroller General—an arm of the legislature rather than of the executive—has long exercised certifying, auditing and set-off roles regarding federal expenditures, it appears firmly established that Congress, if it so chooses, generally has the constitutional prerogative of

designating the personnel to oversee the integrity of its appropriations.

In the present instance the considerations supporting congressional use of an auditing and certifying agency whose members are not entirely selected by the President are, moreover, of much greater strength than is the case with the supervision of federal appropriations generally. Once having determined to create a separate agency to monitor the federal financing of Presidential election campaigns (a decision surely within Congress' power to make) it would be a strange situation indeed, especially in light of recent events showing the potentialities for abuse of Presidential power, if Congress were required to vest in an incumbent President—himself a candidate for re-election and, as such, both a primary beneficiary of the federal funds and a political competitor with others entitled to claim such funds—the exclusive power to nominate the members of that agency. Congress, we believe, was entitled to take steps to insure both the apparent and actual fairness of the financing process.[39]

C. Duties in Connection With the Limits Imposed on Permissible Contributions and Expenditures in Federal Elections.

Sections 608-617 of the Criminal Code (18 U. S. C. §§ 608-617) contain comprehensive substantive limitations on the amounts and sources of contributions and expendi-

39. Just as in the area of information gathering about the financing of federal election campaigns, we do not urge here that all conceivable future exercises by the Commission of its statutory roles relating to the financing of Presidential campaigns will necessarily be consistent with separation-of-powers principles. Where the Commission is challenged at the outset as improperly appointed and, hence, unable to function at all, the relevant question is whether the general scope of Commission functions are properly delegated to a legislative agency. See footnote 36, p. 42, *supra*.

tures in federal election campaigns. These sections provide criminal penalties for their violation.

The Election Commission's role with regard to these substantive limits and their enforcement is a narrow one. It may receive and investigate complaints about violations and may refer apparent violations to the Department of Justice for prosecution or civil relief (2 U. S. C. § 437g (a)(b)(7)). The Commission, however, is given no independent enforcement authority with respect to these provisions. (See 2 U. S. C. § 437g(5), restricting the Commission's independent enforcement authority to violations of "this Act," i.e., the information-gathering provisions, as compared with 2 U. S. C. § 437g(7), which authorizes the Commission to refer to the Attorney General violations of both "this Act" and the Criminal Code provisions in 18 U. S. C. §§ 608-617).

The Commission may issue advisory opinions as to the meaning of §§ 608-617 (2 U. S. C. § 437f) and it may institute actions for declaratory judgment to test their constitutionality (2 U. S. C. § 437h).[40] The Commission is given no general substantive rulemaking authority with regard to the Title 18 spending and contribution limitations, although it is authorized to make such rules in one limited area, that of allocating primary campaign expenditures as between States when such expenditures are made for use in two or more States (§ 608(c)(4)).[41]

40. It is also the designated recipient of certifications from the Secretaries of Labor and Commerce regarding fluctuations in the price index and voting age populations of election districts (18 U. S. C. § 608(d)(g).). Such fluctuations affect the spending limits which Title 18 imposes, but the Commission's duties here are totally passive and ministerial.

41. Thus § 608(c)(1)(A) limits the total expenditures of candidates in Presidential primaries in any State to twice the expenditure limitation applicable to senatorial candidates in such State. Where a Presidential primary candidate makes expenditures which are used in more than one State, as where he sponsors a broadcast

If, as we argue above, the Commission has properly been delegated broad responsibilities in gathering information about election financing for use by Congress and in monitoring the disbursement of federal funds to be used to finance Presidential primaries and election campaigns, its narrow additional functions relating to the Criminal Code limitations on expenditures and contributions would appear to raise no substantial additional problems regarding the appropriate separation of powers. The Commission's limited functions with regard to the Criminal Code provisions are intimately and naturally related to its other responsibilities. Thus, the Commission's exercise of its auditing and investigating functions with respect to the required reporting of campaign contributions and expenditures and the uses made of federal financing funds might well reveal apparent violations of the Criminal Code contribution and expenditure limitations. Congress can hardly have overstepped constitutional bounds in permitting the Commission's investigations full sweep and in requiring the Commission to notify the appropriate law enforcement authorities of such violations, should they be discovered. Again, the intimate relationship between the required reporting of expenditures and contributions, on the one hand, and the substantive limits on the amount and source of such expenditures and contributions, on the other, make it appropriate for the Commission's advisory opinion responsibility to cover both subjects. This is especially so as

41. (Cont'd.)
or telecast which simultaneously reaches two States conducting Presidential primaries, the Commission is to prescribe rules allocating the single expenditure as between the two States, for purposes of determining whether the total amount spent in each State exceeds the statutory limits. The substance of the Commission's rule is not discretionary with it, but the rules are to be "based on the voting age population in [each] State which can reasonably be expected to be influenced by such expenditure." §608(c)(4).

a Commission advisory opinion merely creates a presumption of compliance on the part of one adhering to the Commission's views and operates neither to increase the substantive scope of the criminal provisions nor to intrude upon the prosecutor's prerogatives (2 U. S. C. § 437f(b)). Again, there would appear to be no threat whatsoever to the proper separation of powers in Congress' authorization of the Commission as a proper party to seek declaratory judgments respecting the constitutionality of regulatory legislation closely related to the Commission's primary responsibilities. Finally, the power to make rules allocating multi-state expenditures of federal funds in Presidential primary campaigns as between the States involved is extremely limited in scope and discretion [42] and is a natural outgrowth of the Commission's legislative responsibilities in monitoring the proper expenditure of these federal funds.

D. Appellants' Objections to the Commission's Powers Are in Large Part Premature and in No Event Well Founded.

At this point we focus on objections that appellants make to various functions and powers of the Commission.[43]

42. See p. 49, *supra*, note 41.

43. Despite the fact that Point VIII of appellants' brief is entitled "The Enforcement Provisions of the Challenged Legislation Violate the Constitution," appellants in fact appear to argue (Br. pp. 193-204) not only that some of the Commission's assigned roles are *ultra vires*, but that the *very existence* of the F. E. C. is unconstitutional by virtue of the fact that some of its members were not nominated by the President. Arguing that a legislative agency may only perform functions which the Legislative Branch itself "could perform directly" and that the F. E. C. has been delegated some functions which the Congress could not perform, they conclude that F. E. C. may constitutionally perform *no* functions whatsoever (Br. 199).

Even if appellants were correct in concluding (as they are not) that some significant part of the F. E. C.'s assigned tasks are

With the exceptions noted in the Statement, *supra*, the court below found those objections premature. It noted, for example, that although appellants challenged the Commission's rule-making authority, no rules had become effective. To be sure, some of the Commission's activities may be at a more advanced stage by the time this Court has occasion to act. Nonetheless, it remains true that the Court has no pleading before it that challenges a particular action taken by the Commission, much less a showing that a definitive action taken by the Commission has caused an

43. (Cont'd.)
duties which may not constitutionally be delegated to a legislative commission, they would be clearly wrong in saying that the result of such a partially improper delegation to the F. E. C. would be that the F. E. C. could perform none of its functions. The legislation at issue in this case contains an explicit severability clause. See 2 U. S. C. § 454. As we have noted earlier (footnote, p. 42), the remedy for a delegation of power which is partially invalid would be to delete the particular improper power or powers from the Commission's duties, not to void the entire delegation. See, *e.g., Champlin Rfg. Co. v. Commission*, 286 U. S. 210, 234, 235, noting that a severability clause "discloses an intention to make the Act divisible" and that "unless it is evident that the legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what is left is fully operative as a law." The legislation challenged in this case assigns to the F. E. C. many important functions in connection with federal election campaigns which even appellants, despite the spectacular breadth of their attack, do not appear to challenge as beyond the prerogatives of a legislative commission. Among these are the duties of collecting, collating, preserving, and reporting to Congress comprehensive information about the financing of federal election campaigns, auditing campaign accounts, certifying eligibility for public campaign finance funds, overseeing the repayment of overpayments or improperly spent funds, and transmitting recommendations for proposed legislation or other appropriate action. Moreover, as noted above, Congress had, under prior legislation, assigned most or all of these tasks to legislative officers such as the Secretary of the Senate, the Clerk of the House, the Comptroller General, and certain advisory boards. These are duties which Congress plainly wants performed and which unquestionably may properly be performed by legislative offices and agencies.

injury to a person before the Court. As a result, appellants' objections to the Commission's powers are entirely abstract.

Appellants' reasoning on the merits is that the members of the F. E. C., not having been appointed exclusively by the President, cannot perform any quasi-executive or quasi-judicial functions. Our basic response is rooted in the contentions already elaborated: that Congress' responsibility in relation to federal elections goes well beyond the mere legislative prohibition of fraud or corruptive practice (its role encompassing a duty to secure, examine and audit relevant information, both in order to judge elections and qualifications and in order to deter the exertion of corruptive influence; a duty to control and oversee the expenditure of public monies made available to those engaged in the electoral process; and a duty to initiate appropriate measures with respect to violations of law that come to its attention); that, although the functions entailed by this pervasive responsibility have quasi-executive and quasi-judicial aspects, they are functions appropriate to the Legislative Department in light of its constitutional role; and that accordingly they may appropriately be performed by a legislative commission in aid of the Legislature. It is against this background that appellants' arguments must be viewed.[44]

44. Appellants suggest that the Commission is "wholly subordinate" (Br. 210) to Congress and therefore should not be permitted to exercise responsibilities in a sensitive area. In fact, Congress has provided that the Commission is to be bipartisan, that its members shall be chosen on the basis of "maturity, experience, integrity, impartiality and good judgment" from among individuals not contemporaneously serving in the Government, that they shall have tenure for a period of six years, and that they shall have the authority to staff the agency. § 437c. If subordination were thought to result from the fact that four of the commissioners are appointed by action of the Congressional Parties, it would appear that a considerably greater degree of subordination

(1) *Rulemaking, Policy Statements, and Advisory Opinions.*

Appellants argue (Br. 206) that the publication of rules falls "quintessentially . . . within the executive sphere." Addressing the matter in the abstract, one might say with far greater conviction that rule-making is "quintessentially" a legislative function. In Professor K. C. Davis' words, it is "the part of the administrative process that resembles a legislature's enactment of a statute." Davis, "Administrative Law Text" (3d ed. 1972), § 5.01. The matter, however, is not one to be determined by affixing labels. The fact is that all three departments of government make rules, whether formally or informally. The real question is whether we are correct in our basic argument that Congress' constitutionally permissible role in relation to the federal electoral process is considerably broader than the bare legislation of statutory prescriptions. Thus, if, as we urge, Congress could administer a system of reporting and disclosure through its own officers (as it did for many years), it can certainly do so through a commission. The same holds true of auditing, supervising federal appropriations to candidates and other aspects of the statutory scheme. Moreover, whether Congress proceeds through subordinate officers or by the creation of a commission, it can surely instruct its delegate to fill in the details through rule-making. Indeed, it may be categorically stated that a failure by its delegate to provide guidance and regularization by rules (whether formal or informal) could only be productive of confusion, lack of uniformity and inequity. To quote again from Profes-

44. (Cont'd.)
would result if the appointive power were vested in a single official affiliated with a single Party. The short of the matter is that the device of the commission was adopted in order to achieve even-handedness and greater effectiveness.

sor Davis, rulemaking does not expand power but is "an especially important means of confining discretionary power." Id., § 604(a). Not surprisingly, a principal criticism of public officers and commissions has been a failure to provide the affected members of the public with adequate guidance and clarification. It is ironic that appellants should complain of this Congressional directive.[45]

We have noted that the legislation does not contain a grant of authority to promulgate rules governing Title 18 spending and contribution limitations.[46] It is of course true that there is inevitably some interplay between Title 2 and Title 18. If, for example, the Commission, for purposes of the Title 2 provisions relating to the reporting of expenditures, adopts a rule defining a certain item as an expenditure, that definition, if accepted by the Attorney General and the courts for purposes of a criminal proceeding under Title 18, would bear on the question whether, in a particular case, a candidate had exceeded the statutory spending limits. This is not because the Commission's definition of what is to be reported is binding on

45. This is not to deny that a rule adopted by the Commission would be vulnerable to attack if arbitrary, inconsistent with statutory terms or standards, or otherwise beyond the agency's authority. Any such claim, however, must obviously await a concrete case or controversy.

46. The notice of proposed rulemaking cited by appellants (Br. 203, note) is consistent with the above statement. That notice asked for comment as follows (40 Fed. Reg. 28333):

> "A. Comments should be directed to whether or not the Commission has the authority to issue regulations generally for 18 U. S. C. 608, 610, 611, 613, 614, 615, 616 and 617, similar to its authority with respect to Title 2, or whether the Commission can only issue regulations in respect to Title 18 so far as there is a question of:
>
> 1. General policy;
>
> 2. Where such regulations are necessary or appropriate in connection with the reporting requirements under Title 2; or
>
> 3. Where there are parallel references in Titles 2 and 18."

the Attorney General or the courts for purposes of deciding whether the substantive provisions of the Act have been violated. The case, rather, would be akin to any situation in which enforcement authorities give a measure of deference to an administrative interpretation that is not binding on them. In *Skidmore v. Swift & Co.*, 323 U. S. 134, 140, the Court, commenting on an interpretation of the Fair Labor Standards Act promulgated by the Administrator, observed:

> We consider that the rulings, interpretations and opinions of the Administrator under this Act, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.

The same, the Court notes (*ibid.*), is true of administrative interpretations by "other bodies."

It is of course commonplace that a statutory interpretation adopted by an independent regulatory agency will have relevance to a legal question arising in a criminal proceeding brought by the Attorney General to enforce the same statute.[47] That has never been thought to interfere with the prerogatives of the Attorney General, even though it is obviously true of other commissions, as it is of the F. E. C., that their members are not subject to

47. See, *e.g.*, the provisions of the Securities Act of 1933, 15 U. S. C. 77t, and the Securities Exchange Act of 1934, 15 U. S. C. 78ff.

executive control, either by way of day-to-day direction or by removal.[48]

Having firs contended that rule-making authority gives the Commission excessive authority, appellants next object (Br. 208) that "rules relating to reporting and disclosure requirements promulgated by the F. E. C. are subject to veto by one or both houses of Congress" pursuant to § 438(c), a provision plainly designed to keep the Commission from straying from Congress' purposes. This provision is questioned on the ground that the "legislative veto" does not involve Presidential participation. But a disapproval does not involve new legislation; it leaves the law unchanged. The procedure in question has the implicit approval of this Court. In 1934, Congress delegated to this Court the formulation and prescription of civil rules for the district courts. In a subsequent litigation raising the question whether certain rules that had been adopted and become effective were beyond the scope of the delegation, the Court, sustaining the rules in question, stated (*Sibbach v. Wilson & Co.*, 312 U. S. 1, 14-15): "Moreover, in accordance with the Act, the rules were submitted to the Congress so that that body might examine them and veto their going into effect if contrary to the policy of the legislature."[49]

48. It is also plain that where Congress has provided for a private right of action and for public enforcement of the same statute by the Attorney General (as, for example, in the Sherman Act), a private suit may establish precedent. It could hardly be contended, however, that the duality of the statutory scheme enacted by Congress deprives the Attorney General of constitutional prerogatives.

49. Appellants also suggest that a statute may not delegate to the Legislature (or one of its Houses) the power to disapprove a rule. As Professor Bernard Schwartz has pointed out (Schwartz, "Legislative Control of Administrative Rules and Regulations," 30 N. Y. U. L. Rev. 1032, 1043 (1955)):

> "Logically, to apply the separation of powers in this field is to take us back to the days when the maxim against dele-

What has been said of rulemaking obviously applies to the Commission's authority to formulate general policy. 2 U. S. C. § 437d(a)(9). The making of general policy is surely no less a legislative function than it is an executive or judicial one. Moreover, a statement of policy, though it may commend itself as one entitled to deference, is not controlling on the Attorney General or the courts. See *Skidmore v. Swift & Co., supra; United States v. Staph,* 375 U. S. 118, 128, n. 11.

The advisory opinion, like an interpretive rule or a statement of policy, expresses the agency's understanding of the statute's applicability to an activity or transaction. Though not binding, it provides guidance. Recognizing that secret rulings might in some circumstances become an instrument for favoritism rather than uniformity, Congress has provided that requests for advisory opinions shall be published and interested parties afforded opportunity to submit written comments. § 437f. We submit that the procedure is both salutary and consistent with Congress' role in the electoral process. In the court of appeals' words (J. S. 1579):

> . . . labelling particular functions as "executive" or "judicial" is the beginning rather than the end of the inquiry into whether the function is an appropriate one for a legislative agency. We discern no general constitutional barrier that would prevent a legislative agency from informing the public as to its interpretation of the statutory provision it must administer. In general, indeed, disclosure to the public of how a statute pertaining to election campaigns will be administered is viewed as wholesome, and in any event naturally related to the function of administration. The fact that advisory opinions are usually issued in connection with executive functions, or quasi-judicial functions, does not assign this technique exclusively to the executive or judicial branch.

49. (Cont'd.)
gation of powers was inexorably applied (in theory at least) in our administrative law. There is no more reason today to invalidate delegation of the annulment power to the legislature because of the separation of powers than there is to invalidate delegations of the rule-making power to the agencies themselves on similar grounds."

The court below also responded to the concern expressed in Judge MacKinnon's dissent, namely, that the "good faith" provision (i.e., that one who acts in good faith in accordance with an advisory opinion shall be presumed to be in compliance with the law) may clash with the Attorney General's prerogatives. Acknowledging that the language of presumption is "rather ambiguous," the majority pointed out that the relevant legislative history makes plain that the presumption is rebuttable and does not constitute a grant of immunity. *Ibid.* Thus, the agency is not in the position of administering provisions of the criminal law. At the same time, the provision for rendition of advisory opinions does serve as a measure of protection for the citizen who seeks assurance that his proposed conduct conforms to the law's requirements—a protection that derives not merely from the statutory words of presumption, but from the natural inference that one who acts consistently with official advice lacks criminal intent. It is difficult to see how appellants can claim that they are prejudiced by a procedural device that makes such guidance available.[50]

50. For this reason we have some doubt that the court below was correct in treating as ripe the question of the Commission's power to issue an advisory opinion. An entirely different question would be presented if any party before the Court were seeking declaratory relief with respect to a specific and adverse agency

(2) *Enforcement and Investigation.*

Appellants also challenge the F. E. C.'s enforcement powers under the 1974 legislation, urging that the power of enforcement is "executive beyond question" and, hence, inappropriate for a legislative agency. In fact, the enforcement powers delegated to the F. E. C. are quite limited in scope and, as limited, are well within the proper prerogatives of an arm of the legislature. In addition, as the court of appeals held and as the Attorney General in his *amicus* brief correctly urges, any challenge to the F. E. C.'s enforcement powers at this time is wholly premature and unripe.

In considering the F. E. C.'s enforcement powers it is well to focus, as appellants do not, on the actual scope of those powers as defined by the 1974 legislation at issue in this case. The 1974 statute, entitled the "Federal Election Campaign Act Amendments of 1974," is divided into three main parts. See 88 Stat. 1263-1304. Part 1 consists of amendments to §§ 608 *et seq.* of the Criminal Code (Title 18, U. S. C.) (see 88 Stat. 1263-1272). These amendments place substantive limits on contributions and expenditures in federal election campaigns. Part 2 of the 1974 Act consists of amendments to the Federal Election Campaign Act of 1971, 2 U. S. C. § 431 *et seq.* (see 88 Stat. 1272-1290). These amendments create the F. E. C., describe its duties, and impose reporting and disclosure requirements on political committees, candidates, contributors, etc. Part 3, the Presidential Election Campaign Fund Act and the

50. (Cont'd.)
interpretation on the ground that it was causing a present hardship. *See National Automatic Laundry & Cleaning Council v. Shultz*, 443 F. 2d 689 (D. C. Cir. 1971), holding that in the circumstances presented an interpretive ruling of the Administrator of the Wage and Hour Division, Department of Labor, was reviewable in advance of the institution of enforcement proceedings.

Presidential Primary Matching Payment Account Act, consists of amendments to the Internal Revenue Code, 26 U. S. C. §§ 9001 *et seq.* (see 88 Stat. 1291-1304). These amendments provide for federal funding of general and primary Presidential election campaigns.

The F. E. C.'s main enforcement powers with relation to the provisions of Titles 2 and 18 of the United States Code are set out in 2 U. S. C. § 437g, a provision of Part 2 of the 1974 legislation—*i.e.*, that part which consists of amendments to the Federal Election Campaign Act of 1971. The language of Section 437g imposes a critical limitation with respect to the F. E. C.'s enforcement powers. Where § 437g refers to enforcement of "this Act" —that is, where it refers to enforcement of the *reporting and disclosure* requirements contained in the amendments to the 1971 Act (2 U. S. C. §§ 431 *et seq.*)—it gives the F. E. C. full independent power to go to Court to obtain compliance with those information-gathering requirements. See subsection (5) of § 437g, giving the F. E. C. power to seek civil judicial enforcement as against acts "which constitute or will constitute a violation of *this Act*" (emphasis added). That "this Act" means, not the entire group of 1974 amendments, but only those amendments relating to the information gathering provisions of the 1971 Federal Election Campaign Act, is confirmed by footnote 1 to 2 U. S. C. § 434, as set forth in the statutory pamphlet entitled Federal Election Campaign Laws which has been lodged with the Court: " 'This Act' refers to the Federal Election Campaign Act of 1971 . . . as amended by . . . the Federal Election Campaign Act Amendments of 1974. This will be true whenever the term 'this Act' appears." But where § 437g refers to civil enforcement of the Criminal Code provisions of Title 18—provisions which set substantive limits on contributions and expenditures—it does not give the F. E. C. independent enforcement power, but

provides instead that the F. E. C. may only refer apparent violations to the Attorney General with a "request" that civil enforcement proceedings be instituted. See subsection (7) of § 437g, providing that "whenever in the judgment of the Commission . . . any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act or of sections 608, 610, 611, 613, 614, 615, 616, or 617 of Title 18 . . . upon request by the Commission the Attorney General on behalf of the United States shall institute a civil action for relief. . . ." [51] And the F. E. C., of course, has no enforcement power whatsoever with regard to the prosecution of criminal violations of the Title 18 provisions.

The short of the matter is that the F. E. C.'s independent judicial enforcement powers under § 437g relate only to the process of information-gathering on behalf of the Congress. They do not relate to the enforcement of the substantive limits on contributions and expenditures contained in the Criminal Code.[52] We submit that it is

51. It is true that 2 U. S. C. § 437c(b) gives the F. E. C. "primary jurisdiction with respect to the civil enforcement" of both "this Act" and §§ 608 *et seq.* of the Criminal Code. However, in view of the explicit language of §§ 437g(5) and (7), quoted in the text, the "primary jurisdiction" conferred by § 437c(b) evidently refers to the F. E. C.'s primary responsibility to receive complaints about, and to investigate, alleged violations of both parts of the 1974 legislation.

52. Even in the area of information-gathering, the Commission does not have *exclusive* enforcement powers. Under § 437g (7) the Commission may, if it wishes, refer all civil enforcement proceedings—including actions to compel compliance with the reporting requirements of the 1974 legislation—to the Attorney General. Section 437g(7) provides that, upon request by the F. E. C., the Attorney General, on behalf of the United States, "shall" institute a civil enforcement proceeding. We agree with the court below that "there is no showing in this case of a convincing legislative history that would enable us to conclude that 'shall' was intended to be the 'language of command.'" To our knowledge Congress has never attempted to deprive the Attorney General of his ordinary discretion to decline to institute legal proceedings.

entirely clear that Congress may thus vest in a legislative agency staffed by personnel of its own choosing the power to gather information on behalf of Congress relevant to Congress' own responsibilities—here the responsibility of exercising legislative oversight into the federal election process as well as the responsibility of judging the qualifications of its own members in terms of their compliance with federal election finance laws. As the court below noted (J. S. 1575): "It is certainly within the sphere of appropriate legislative activity for Congress to gather and audit information to aid in the process of 'preventing fraud and corruption' in federal elections and in formulating legislation to accomplish that goal" (citing *Barenblatt v. United States*, 360 U. S. 109, 111 (1959) ("[t]he scope of the power of inquiry is . . . as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution) and *McGrain v. Dougherty*, 273 U. S. 135, 175 (1927) ("[a] legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change")).

And where Congress has the power to gather information, it also has the power, through its own agents, to invoke compulsive sanctions against persons who do not comply with its legitimate reporting and disclosure requirements. "[T]he power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function." *McGrain v. Dougherty*, 273 U. S. at 174. Congress may, indeed, apply coercive sanctions directly, without resort to the Judicial Branch. See, *e.g.*, *In re Chapman*, 166 U. S. 661; *United States v. Bryan*, 339 U. S. 323; *Watkins v. United States*, 354 U. S. 178, 206-207; *McGrain v. Dougherty, supra*. *A fortiori*, it may authorize its agents to use the judicial process to compel compliance with its proper requests for information. See,

e.g., Eastland v. United States Servicemen's Fund, 95 S. Ct. 1813; *Senate Select Committee v. Nixon*, 498 F. 2d 725 (D. C. Cir. 1974). We note in passing that the independent administrative agencies also routinely exercise the independent enforcement power of going to court in aid of their information-gathering processes (see, *e.g.*, 15 U. S. C. § 49 (F. T. C.); 15 U. S. C. § 78 (S. E. C.); 29 U. S. C. § 161 (N. L. R. B.)), and that the same power has been given to legislative study commissions whose membership, like that of the F. E. C., is appointed in part by Congress outside of the provisions of Article II, Section 2 (see, *e.g.*, 84 Stat. 938, § 806 (Commission to Review National Policy Toward Gambling); 80 Stat. 868 (Commission on Political Activity of Government Personnel)).

It is not clear from appellants' brief which aspects of the F. E. C.'s enforcement authority they mean to challenge beyond those conferred by §§ 437g(5) and (7). The power to receive complaints and to investigate alleged violations of the reporting and disclosure requirements of Title 2 ("this Act") is a necessary part of the power to enforce compliance with those requirements. Since violations of the duties to report contributions and expenditures will often be linked with violations of the substantive limits on those contributions and expenditures, it was completely natural, we believe, for Congress to broaden the F. E. C.'s investigative authority to cover these substantive violations as well, subject to the proviso, as noted above, that if the F. E. C. should uncover an apparent substantive violation it may not commence enforcement proceedings itself, but must refer the case to the Department of Justice. Separation of powers principles are surely not violated by requiring legislative agencies to refer cases to the Executive when their investigations uncover violations of law.

As noted in Point IV-B of this brief, *supra*, the F. E. C. also has independent enforcement power, under the Internal Revenue Code provisions of the 1974 legislation, to insure that presidential candidates and others receiving federal funds in connection with presidential primaries, nominating conventions and general elections do not receive or spend more than is allowable under the law. These enforcement duties were exercised by the Comptroller General—a conceded legislative officer—under the legislation immediately preceding the 1974 amendments. In view of the traditional role of the Comptroller General in the area of appropriations, there can hardly be any serious doubt of the legislature's power to use its own officers to monitor the use of funds which it appropriates.

Finally (and without modifying, in any respect, our view that the enforcement powers delegated to the F. E. C. are entirely appropriate powers to be vested in a legislative agency) we wish to emphasize our agreement with both the court below and the Attorney General as *amicus* in this Court that appellants' challenges to the F. E. C.'s limited enforcement responsibilities are entirely premature. Questions of ripeness in constitutional adjudication are often close and intricate. This ripeness question is not. It is, quite frankly, difficult to conceive of any basis for the view that resolving the legitimacy of the F. E. C.'s enforcement responsibilities at this time will affect the conduct of any interested party in any respect whatsoever. The F. E. C. has begun no enforcement proceedings against anyone.[53] Indeed, since the F. E. C. is given the

53. Appellants suggest (Br. 203) that a letter sent by the Chairman of the F. E. C. to the Committee for a Constitutional Presidency—McCarthy '76 on August 28, 1975, constitutes a "threat" of "enforcement action." This letter plainly evinces the F. E. C.'s intention to audit the Committee's records, but we do not understand appellants to challenge the F. E. C.'s auditing responsibilities. The F. E. C. Chairman's statement that the

option in all cases of referring enforcement suits to the Department of Justice, the F. E. C. may *never* exercise the challenged powers at all. The questions urged by appellants may thus not only be unripe, but may be wholly academic as well. Moreover, all of the violations as to which the F. E. C. has any potential enforcement role are subject, whatever the speculative possibility of an F. E. C. enforcement proceeding, to criminal sanctions as well as to civil enforcement proceedings instituted by the Attorney General (see 2 U. S. C. § 441). It therefore cannot be credibly asserted that the F. E. C.'s enforcement power bears in the least upon the present conduct of the appellants.[54]

V.

The Method of Appointment Chosen by Congress Is Neither Incongruous Nor Violative of the Doctrine of Separation of Powers.

We have elaborated our reasons for believing that Congress may exercise authority to appoint officers when the functions delegated to those officers are substantially

53. (Cont'd.)
F. E. C. has been assigned "civil jurisdiction" hardly constitutes a "threat" that the F. E. C. will institute civil enforcement proceedings against the Committee. Such a threat could only occur after violations had been uncovered.

54. The same conclusion of prematurity applies with particular force to appellants' attack upon the candidacy disqualification provision in 2 U. S. C. § 456 (Br. 221-223). Obviously, no plaintiff has been subjected to a § 456 proceeding and it may be that § 456 will, in fact, never be invoked. If § 456 were invoked by the F. E. C. at some future date, the proceeding would be followed by full judicial review providing the disqualified candidate full opportunity to raise any constitutional claims. Finally, since § 456 applies only to statutory reporting violations, which all carry criminal sanctions, § 456 can have no possible present chilling effect upon the conduct of any appellant.

related to the performance of Congressional responsibilities; that Congress' constitutional role in the federal electoral process entails the performance of quasi-judicial and quasi-executive functions as well as exercise of its legislative power; and that when, as here, Congress delegates to a Commission functions of a kind that it is authorized to perform for itself, it may assuredly choose (or participate in the choice of) its surrogates.

So understood, the argument involves no clash with the concept of separation of powers.[55] Since the Commission is to perform tasks of a kind and character that Congress could appropriately perform (and has long performed) through its own staff and officers, it is in no sense an executive agency.[56] By the same token, there is no invasion of any prerogative reserved to the Executive Branch. As stated in *Humphrey's Executor v. United States*, 295 U. S. 602, 628, with reference to the Federal Trade Commission, "To the extent that [the Commission] exercises any executive function—as distinguished from executive power in the constitutional sense—it does so in the discharge and effectuation of its quasi-legislative or quasi-judicial powers . . . ."

As *Humphrey's Executor* further emphasizes, the doctrine of separation of powers is not an inflexible one rigidly dividing our government into three watertight compart-

55. We note parenthetically that the concept gained adherence at the Constitutional Convention because of apprehension that the Chief Executive might become excessively powerful. The concern was to limit "executive prerogatives customary in monarchies . . .," *Myers v. United States*, 272 U. S. 52, 293-4 (dissenting opinion of Justice Brandeis).

56. The Civil Service Commission issued an unpublished ruling on May 6, 1975 to the effect that the Election Commission is not within the Executive Branch and that its employees are accordingly not subject to Civil Service Commission regulations or the Hatch Act.

ments.[57] Rather, it reflects the precept that, as a general rule, each branch of government should have, and be free to exercise, those powers that are appropriate to its functions.

The point was strikingly made, almost a century ago, in *Ex parte Siebold*, 100 U. S. 376, a case which, like the instant litigation, involved control over the federal electoral process. Congress had provided in the Enforcement Act of 1870 that in certain circumstances federal judges should appoint supervisors to oversee elections being conducted in the States. The supervisors were to attend at places of registration and at elections, and were accorded authority to challenge any person proposing to register or vote unlawfully, to witness the counting of votes, and to identify by their signatures the registration of voters and the election tally sheets. Addressing the claim that it was constitutionally impermissible for judges to be charged with the duty of appointing officials who would perform functions of a quasi-executive character, the Court ruled that the separation doctrine is not an "absolute" (100 U. S. at 397), and that it was neither incongrous nor improper for Congress, in its discretion, to vest the power to appoint the officers in question in the federal judiciary rather than the President (*id.* at 398).

Certainly, the choice made by Congress in determining the composition of the Federal Election Commission also reasonably accommodates the diverse interests involved.

57. Thus, despite Article III, vesting the judicial power of the United States in the courts (in terms virtually identical with Article II, vesting the executive power in the President), Congress has created a number of "legislative" courts. Few would question that Congress may place some judicial power in non-Article III courts when it has a valid legislative purpose in doing so. *See generally*, Bator, Mishkin, Shapiro and Wechsler, "Hart and Wechsler's The Federal Courts and the Federal System," p. 396 (1973).

We submit that it avoids, rather than creates, the suggestion of impropriety.

As noted earlier, the Commission is bipartisan. Apart from its two *ex officio* members, the Secretary of the Senate and the Clerk of the House, it consists of two members nominated in the Senate, two nominated in the House, and two nominated by the President. Since the Commission's responsibilities relate to Presidential elections and to elections of the members of both Houses, the scheme can hardly be regarded as incongrous.

On the other hand, one might well question the wisdom of confining to the President alone the selection of those who are to be engaged in the supervision of the electoral process. The President is not only Chief of State; he is Chief of his Party. He may be, in addition, an announced candidate for reelection. To divide the authority to select the members of the Commission is to minimize potential conflicts of interest, to lessen the dangers of partisanship, and to strengthen public confidence that the law will be administered diligently and even-handedly.

CONCLUSION.

The Commission is an arm of the Congress and the method by which its members are selected is both constitutional and appropriate. The powers and functions which it has been delegated are likewise appropriate to its role.

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Nos. 75-436, 75-437

JAMES L. BUCKLEY, *et al.*,
Appellants,
v.
FRANCIS R. VALEO, *et al.*,
Appellees.

On Appeal from the United States Court of Appeals for the District of Columbia Circuit and the United States District Court for the District of Columbia

BRIEF FOR APPELLEES CENTER FOR PUBLIC FINANCING OF ELECTIONS, COMMON CAUSE, LEAGUE OF WOMEN VOTERS OF THE UNITED STATES, *et al.*

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40 Fed. Reg. 36242 ..... 136, 153, 3a
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40 Fed. Reg. 44700-01 162

BOOKS:

D. Adamany & G. Agree, Political Money: A Strategy for Campaign Financing in America (1975) 58, 65, 81, 87, 104, 182, 218, 221
H. Alexander, Financing the 1972 Election (forthcoming D.C. Heath & Co. 1976) 66, 229
H. Alexander, Tax Incentives for Political Contributions? (1961) 187
American Bar Association Special Committee on Election Reform, Symposium on Campaign Financing Regulation (1975) 217
A. Bickel, The Morality of Consent (1975) 76, 78
L. D. Brandeis, Other People's Money (1914) 165
Z. Chafee, Jr., Government and Mass Communications (1947, repr. ed. 1965) 192
Citizens' Research Foundation, Political Contributors and Lenders of $10,000 or More in 1972 (1975) 66
R. Dahl, After the Revolution? Authority in a Good Society (1970) 81
D. Dunn, Financing Presidential Campaigns (1972) 46, 73, 112
T. Emerson, The System of Freedom of Expression (1970) 44, 76, 77, 94, 192
T. Emerson, Toward A General Theory of the First Amendment (1966) 77, 167

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J. Kirby, Congress and the Public Trust, Report of the Assoication of the Bar of the City of New York Special Committee on Congressional Ethics (1970) 217
D. Mazmanian, Third Parties in Presidential Elections (1974) 205, 206
J. S. Mill, The Philosophy of John Stuart Mill (M. Cohen ed. 1961) 82
A. Okun, Equality and Efficiency: The Big Tradeoff (1975) 81, 221
Peabody, et al., To Enact a Law: Congress and Campaign Financing (1972) 47
A. Reitman & R. Davidson, The Election Process: Voting Laws & Procedures (1972) 73
D. Rosenbloom, Electing Congress: The Financial Dilemma (1970) 124
A. Rosenthal, Federal Regulation of Campaign Finance: Some Constitutional Questions (1971) .. 44, 77, 81, 85, 89, 97, 129, 151, 160, 172, 187, 188, 230
T. Schwartz, Public Financing of Elections: A Constitutional Division of the Wealth (1975) 218
J. Sundquist, Dynamics of the Party System (1973) 61, 205, 206, 207
C. V. Woodward, Responses of the Presidents to Charges of Misconduct (1974) 60, 61

ARTICLES:

Alfange, *Free Speech and Symbolic Conduct: The Draft-Card Burning Case*, 1968 Sup. Ct. 1 93
Brennan, *The Meiklejohn Interpretation of the First Amendment*, 79 Harv. L. Rev. 1 (1965) 167
Casper, *Williams* v. *Rhodes and Public Financing of Political Parties under the American and German Constitutions*, 1969 Sup. Ct. Rev. 271 .. 182
Comment, *The Constitutionality of Restrictions on Individual Contributions to Candidates in Federal Elections*, 122 U. Pa. L.Rev. 1609 (1974) .. 47

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Comment, *Free Speech Implications of Campaign Expenditure Ceilings*, 7 Harv. Civ. Rights-Civ. Lib. L. Rev. 214 (1972) 77, 90
Cox, *The Role of Congress in Constitutional Determinations*, 40 U. Cin. L. Rev. 199 (1971) 38, 39
Developments in the Law—Elections, 88 Harv. L. Rev. 1111 (1975) 44, 182, 196, 197, 211, 232
Ely, *Flag Desecration: A Case Study in the Roles of Categorization and Balancing in First Amendment Analysis*, 88 Harv. L. Rev. 1482 (1975) 91
Fleishman, *Public Financing of Election Campaigns: Constitutional Constraints on Steps Toward Equality of Political Influence as Citizens*, 52 N. Car. L. Rev. 349 (1973).....187, 188, 197, 200, 221, 233
Kalven, *The New York Times Case: A Note on "The Central Meaning of the First Amendment,"* 1964 Sup. Ct. Rev. 191 78
Karst, *Legislative Facts in Constitutional Litigation*, 1960 Sup. Ct. Rev. 75 40
Kurland, *Of Church and State and the Supreme Court*, 29 U. Chi. L. Rev. 1 (1961) 190
Lobel, *Federal Control of Campaign Contributions*, 51 Minn. L. Rev. 1 (1966) 47
Meiklejohn, *The First Amendment Is An Absolute*, 1961 Sup. Ct. Rev. 245 78
Nicholson, *Campaign Financing and Equal Protection*, 26 Stan. L. Rev. 815 (1974) 85
Note, *Campaign Finance Reform: Pollution Control for the Smoke-Filled Rooms?*, 23 Case W. Res. L. Rev. 631 (1972) 47
Note, *Campaign Spending Controls Under the Federal Election Campaign Act of 1971*, 8 Colum. J.L. & S.P. 285 (1972) 77
Note, *Campaign Spending Regulation: The Failure of the First Step*, 8 Harv. J. Legis. 640 (1971) 90

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Note, *The Constitutionality of Financial Disclosure Laws*, 59 Cornell L. Rev. 345 (1974) 47
Note, *Less Drastic Means and the First Amendment*, 78 Yale L.J. 464 (1969) 102
Note, *Statutory Regulation of Political Campaign Funds*, 66 Harv. L. Rev. 1259 (1953) 107
Note, 78 Harv. L. Rev. 1260 (1965) 188
Redish, *Campaign Spending Laws and the First Amendment*, 46 N.Y.U.L. Rev. 900 (1971) 77
Roady, *Ten Years of Florida's "Who Gave It—Who Got It" Law*, 27 Law & Contemp. Prob. 434 (1962) 169
Rosenthal, *Campaign Financing and the Constitution*, Harv. J. Legis. 359 (1972) 187, 216, 230
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LEGISLATIVE MATERIALS:

Confidence and Concern: Citizens View American Government, A Survey of Public Attitudes, 93d Cong., 1st Sess., Pts. 1, 2 and 3 (1973) (Comm. Print) 64
Final Report of the Senate Select Comm. on Presidential Campaign Activities, S. Rep. No. 981, 93d Cong., 2d Sess. (1974) 48-51, 164, 165
Hearings Before the Senate Select Comm. on Presidential Campaign Activities, 93d Cong., 1st Sess. (1973) 51, 50-60, 70, 163-65, 180
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Hearings on H.R. 7612 and S. 372 Before the Subcomm. on Elections of the House Comm. on House Administration, 93d Cong., 1st Sess. (1973) 72, 119
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120 Cong. Rec. H7919 65
120 Cong. Rec. H7922 71
120 Cong. Rec. S17872-88 144
121 Cong. Rec. H8048 100

MISCELLANEOUS:

"A Boost for Campaign Reform," Christian Science Monitor, Aug. 21, 1975 37
"A Chance to Prove Itself," Philadelphia Bulletin, Aug. 20, 1975 36
"A Right to Spend?" *Des Moines Register*, Sept. 7, 1975 36-37
"Buckley is Filling His '76 War Chest" The New York Times, October 12, 1975, at 61, col. 4 124
"Costly Campaigns and Free Speech," The Washington Post, Aug. 21, 1975 37
"The Election Reform Act in Court," Sacramento Bee, Aug. 31, 1975 37
"Election Reform Upheld," Albuquerque Journal, Aug. 17, 1975 36
Federal Election Commission Press Release, Oct. 15, 1975 ..... 66, 185

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Financing Presidential Campaigns, Report of the President's Commission on Campaign Costs (1962)	62, 63
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"Good News on the Campaign Front," Baltimore Sun, Aug. 19, 1975	36
"Hope for the Election Reform Act," The Louisville Times, Aug. 19, 1975	36
"Money and Politics," Newark Star Ledger, Aug. 19, 1975	37
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The New York Times, Oct. 13, 1974, § 4, at 18, col. 1	73
The New York Times, September 22, 1975, at 12, col. 3	86
The New York Times, Oct. 16, 1975, at 24, col. 1	123
"Or of the Press," Address of Justice Potter Stewart, Yale Law School Sesquicentennial Convocation (Nov. 2, 1974)	93, 168
Sacramento Bee, July 4, 19, 1973	180
The Washington Post, July 27, 1975, at A-1, A-12	124
The Washington Post, Sept. 21, 1975	132
The Washington Post, Oct. 10, 1975, at A-3, col. 1	144
The Washington Star, Oct. 11, 1975	122
Watergate Special Prosecution Force Report (Oct., 1975)	166
Witcover, "New Campaign Fund Law Aready Making Critical Impact," The Washington Post, March 15, 1975, at A3, col. 3	80

In the Supreme Court of the United States

OCTOBER TERM, 1975

Nos. 75-436, 75-437

JAMES L. BUCKLEY, *et al.*,
Appellants,

v.

FRANCIS R. VALEO, *et al.*,
Appellees.

On Appeal from the United States Court of Appeals for the District of Columbia Circuit and the United States District Court for the District of Columbia

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BRIEF FOR APPELLEES CENTER FOR PUBLIC FINANCING OF ELECTIONS, COMMON CAUSE, LEAGUE OF WOMEN VOTERS OF THE UNITED STATES, *et al.*

QUESTIONS PRESENTED

1. Have appellants proven a sufficient likelihood of unconstitutional harm to themselves or others to warrant invalidating major congressional legislation before it has had a chance to function?

2. Does the First Amendment forbid Congress to impose *any* limits on campaign contributions and expenditures, even where necessary to serve compelling interests in protecting the integrity of the electoral process?

3. Have appellants proven that the particular limits chosen by Congress will so inevitably have unconstitutional effects that the limits should be voided before they have any chance to operate?

4. Have appellants proven that the disclosure provisions of these laws are overbroad in requiring disclosure of small contributions and contributions to third party candidates?

5. Does the Constitution forbid Congress to provide *any* financial assistance for the campaigns of persons seeking election to federal office?

6. Have appellants proven that the particular public financing provisions of these statutes discriminate invidiously against them?

7. Are the provisions of these statutes concerning the powers and method of appointment of the Federal Election Commission ripe for review, and if so do they violate the constitutional separation of powers? [1]

STATEMENT OF THE CASE

This action arises out of a complaint filed in the United States District Court for the District of Columbia on January 2, 1975, seeking a declaration that appellants' constitutional rights are violated by two federal statutes:

[1] We do not address this question but respectfully submit that the decision of the court of appeals with respect to it should be affirmed, for the reasons stated in the Brief of Special Counsel to the Commission and also for the broader reasons stated in the Brief for *Amici Curiae* Senators Scott and Kennedy.

—the Federal Election Campaign Act of 1971, Public Law 92-225, 86 Stat. 3, 2 U.S.C. §§ 431 *et seq.* ("FECA"), as amended by the Federal Election Campaign Act Amendments of 1974, Public Law 93-443, 88 Stat. 1263 ("FECA Amendments"); and

—Subtitle H of the Internal Revenue Code of 1954, Public Law 92-178, 85 Stat. 562, 26 U.S.C. §§ 9001 *et seq.* ("Subtitle H"), as amended by Public Law 93-53, 87 Stat. 138, and by the FECA Amendments.

The complaint also asked that the enforcement of these statutes be enjoined.

Appellants are an assortment of federal officeholders, candidates for federal office, political organizations supporting those candidates, one chapter of a national civil liberties organization, one publication, and one donor to candidates for federal office. Appellants make three basic challenges to the new laws: First, they deny that Congress has authority to impose *any* limits on campaign contributions or expenditures or to provide *any* public financing to campaigns for election to federal office. Second, they attack the specific contribution, expenditure, public financing, and disclosure provisions Congress enacted on the ground that they will necessarily operate discriminatorily and have other impermissible effects. Third, they attack the composition and powers of the Federal Election Commission (FEC) as a violation of the separation of powers.

The defendants named in the complaint are the Secretary of the United States Senate, the Clerk of the United States House of Representatives, the Comptroller General of the United States, the Attorney General of the United States, and the FEC.

Appellees Center for Public Financing of Elections, Common Cause, League of Women Voters of the United States, *et al.* intervened as defendants with the permission of the court of appeals. They are three nonprofit organizations that have as their aim the protection of the integrity of the electoral process, and eight individual voters active in these organizations.

Pursuant to Section 315(a) of the FECA as amended, 2 U.S.C. § 437h, the district court (Corcoran, J.) on January 27, 1975 certified the proceeding to the court of appeals. On April 14, that court *en banc* granted the defendants' and intervening defendants' motion to remand, and ordered the district court to identify constitutional issues in the complaint, take evidence, make findings of fact, and certify constitutional questions to the court of appeals. The April 14 Order also directed that the public financing issues raised by Subtitle H be argued both to the court of appeals and to a three-judge district court, so as to eliminate any doubt as to the correct method of reviewing Subtitle H.

On May 19, 1975 the district court completed its assigned tasks and transmitted its findings of fact and its certified constitutional questions to the court of appeals. The district court's findings—which are based largely on stipulations by the parties and which appellants do not challenge—detail a history of campaign financing abuses proving, as the court of appeals found, that

> "the Government has a clear and compelling interest in safeguarding the integrity of elections and avoiding the undue influence of wealth." Ct. App. Op. 1517.[2]

[2] The court of appeals' decision is reproduced in Appendix A to the jurisdictional statement in No. 75-436. Page citations herein are to the page numbers of the slip opinion, which are identical to the page numbers in that appendix.

As the court of appeals concluded, the findings contain only "scant" and "skimpy" evidence to support appellants' allegations of harm from the challenged statutes. *Id.* at 1546.[3] The district court's findings are discussed in more detail in the Argument below.

The court of appeals heard oral arguments *en banc* on June 13, 1975, sitting together with the three-judge district court, and both courts announced their decisions on August 15, 1975. They upheld all major provisions of the statutes. With respect to certain provisions dealing with the powers of the FEC, they held that appellants' challenge was premature. The court of appeals invalidated one peripheral disclosure provision as overbroad.[4] The court of appeals explained its decision in an 88-page *per curiam* opinion, joined on most issues by six of the eight judges. The three-judge district court did not issue a separate opinion but relied on the *per curiam* opinion of the court of appeals.

Appellants appealed to this Court from the decisions of both lower courts. All appellees supported the request to note probable jurisdiction, and the Court noted probable jurisdiction on October 6, 1975.

[3] Under the unique review provisions of Section 315(a), 2 U.S.C. § 437h(a), the court of appeals was the initial finder of "ultimate" facts based on the district court's subsidiary findings.

[4] The provision held unconstitutional, 2 U.S.C. § 437a, required financial disclosures by "issue" groups not directly involved in federal election campaigns. The court of appeals held that Section 437a "is not a core section and is plainly severable from the balance of the legislation." Ct. App. Op. 1519. No appeal has been taken from the invalidation of that provision, and it is not discussed herein.

SUMMARY OF ARGUMENT

Prematurity and Failure of Proof. Section 315 of the FECA did not and could not empower an Article III court to render an advisory opinion. Despite the broad sweep of appellants' claims, few of the effects of the challenged provisions are ready for judicial review. The provisions have not yet had a chance to function in a single regular election year. The FEC is only beginning to interpret and apply them to concrete situations, and none of its interpretations or regulations is now before the Court for review.

Appellants' hypothetical assertions of injury and discrimination have not actually occurred in fact, either to appellants or to anyone else, and there is no proof that they ever will. As the courts below found, appellants' own deposition testimony and the record of past elections either belies their predictions or is at worst equivocal. As plaintiffs attacking the constitutionality of a new statute, appellants have failed to carry their burden of proving that the mere existence of the statute has produced or threatens immediately to produce the injuries they claim.

This Court's treatment of the constitutionality of the Hatch Act (5 U.S.C. § 7324) suggests the appropriate judicial response. In *United Public Workers* v. *Mitchell*, 330 U.S. 75 (1947), the Court had before it a similarly broad challenge to that statute's ban on political activities, filed soon after its enactment. The Court rejected the broad challenge on the ground that the statute served compelling public interests and posed only a "hypothetical threat" to the constitutional rights asserted by plaintiffs. The Court resolved only the narrow issue one plaintiff properly posed, saying "[i]t would not accord with judicial responsibility to adjudge" the broader issues until "definite rights appear upon the one side and definite prejudicial interferences upon the other." *Id.* at 90 (footnote omitted).

Twenty-five years later, another challenge to the Hatch Act came before the Court. *Civil Service Commission* v. *Letter Carriers*, 413 U.S. 548 (1973). The Court reviewed the Commission's administration of the Act since 1940 and the detailed interpretive regulations it had issued and upheld the constitutionality of the statute and the regulations "as actually applied in practice." *Id.* at 575.

Similar principles of judicial responsibility apply here. To the extent appellants argue that the challenged provisions are unconstitutional on their face because Congress may not set *any* limits on campaign contributions and expenditures and may not provide *any* public financing for presidential campaigns, their claims can and should be adjudicated **now**. But their claims should be rejected to the extent **their** arguments **turn** on actions the FEC may or may not take at some future date, or on their unprovable predictions and speculations as to how the particular statutory limits and public financing provisions may or may not work in a variety of presently hypothetical circumstances.

The Basic Congressional Power. Congress has the express constitutional duty to make laws regulating the "Times, Places and Manner" of electing members of the Senate and House (Article I, § 4), and the same implied power for presidential elections. *Burroughs* **v.** *United States*, 290 U.S. 534 (1934). "To say that Congress is without power to pass appropriate legislation to safeguard such an election from the improper use of

money to influence the result is to deny to the nation in a vital particular the power of self-protection." *Id.* at 545. Since the central purpose of the challenged provisions is precisely to "safeguard" federal elections "from the improper use of money," they are clearly within the lawmaking power unless they infringe on other constitutional rights.

The Relationship of Money to Speech. Appellants argue that any monetary limits on campaign giving and spending have impermissible effects on political speech. The challenged provisions place no limit whatever on the content or quantity of political speech. The harms they seek to remedy are not the effects of unlimited *speech* on the integrity of the political process, but the effects of unlimited *money*. These laws do not touch, nor are their objectives frustrated by, any actions that increase the reach of political speech without further escalating the cost of campaigns.[5]

Of course, it is true that the more money a candidate has available, the more he might try to disseminate his message. If unlimited money were available, some candidates would spend it all, just as the Pentagon would "fortify the moon." It is only in this sense that the regulation of campaign money has any effects on political expression and other constitutional values protected by the First Amendment. We submit that when such effects are entirely incidental to the purpose of the statute—

[5] For example, the Federal Communications Commission's recent reinterpretation of the "equal time" rule will have the effect of expanding the reach of candidate speech at no cost to candidates or their supporters. But it will not frustrate the objectives of these laws, because the harms at which they aim do not arise out of the fact that candidates speak or that their speech reaches many voters. *See* pp. 89-91, *infra*.

as is true here—they can be justified by compelling needs of at least equal constitutional importance, so long as the result does not go beyond what Congress has reasonably determined to be the least restrictive means of meeting those needs. *United States* v. *O'Brien*, 391 U.S. 367 (1968). We also agree that the congressional judgments as to the existence of the needs and the selection of the remedies demand close judicial scrutiny. We submit that these very strict standards are met by the statutory provisions now ripe for review.

The Compelling Needs. Compelling public needs—all of them closely related to First Amendment as well as other constitutional values—sustain the validity of the statutes challenged here. The primary compelling need is to curb the undue influence of a wealthy few on candidate positions and on government actions—and the corrosive effect of both the fact of such influence and its appearance on the public's confidence in the integrity of its elected government.

The compelling need to check public cynicism and restore public confidence in the integrity of government has been rising in urgency for more than a decade. By 1974, it could not have been plainer. Unlimited campaign giving and spending had created a powerful magnetic attraction between candidates and wealthy individuals and groups. It had also created a pervasive and in some cases accurate public belief that candidates who seek and obtain the disproportionate support of the wealthy grant government favors and relieve government pressures in gratitude or exchange. As the courts below found, the record is full of such instances: the sordid tale of the milk contributions and the consequent shift in governmental policy on milk price supports; the outright sale of ambassadorships; the dunning of businessmen and

labor leaders by or on behalf of the members of congressional committees with oversight over the particular interests of those solicited; the contributors who frankly admitted they gave to those with governmental power over their special interests in order to advance or defend those interests; and the numerous contributors who gave to opposing candidates running for the same office.

As this Court noted in *Civil Service Commission* v. *Letter Carriers*, 413 U.S. 548, 565 (1973), "it is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative government is not to be eroded to a disastrous extent." What applies to the apparent behavior of civil servants applies with equal force to the apparent behavior of our most important elected officials and of candidates for these high elective offices.

An ancillary compelling need is the same constitutional interest that underpins the apportionment and voting rights cases—to equalize as far as practicable the relative ability of all voters to affect electoral choices. Nothing much can be done about some differences among voters, such as their degree of political interest, their skill in advocacy, or their willingness to engage in campaign work. But something can be done about the ability of the wealthy few to make large contributions and the extreme, almost drug-like dependence of candidates on obtaining these large contributions in order to match the expenditures of their opponents. It was this same compelling need that persuaded this Court to strike down the large state filing fees held unconstitutional in *Bullock* v. *Carter*, 405 U.S. 134, 144 (1972), because they

created "disparity in voting power based on wealth" between the "wealthy few" and the "unwealthy many." *See* Ct. App. Op. 1517.

The courts below found that in the 1974 congressional elections, 90 per cent of all campaign contributions came from less than 1 per cent of the voters. In the 1972 elections, the 1254 largest contributors—less than 0.001 percent of the voting age population—accounted for over $51 million in campaign contributions. A mere 153 individuals—less than one two-thousandth of one percent of those who voted for Mr. Nixon—contributed some $20 million or about a third of the money raised in his campaign.

As the courts below found, the record shows that candidates must spend a disproportionate amount of their time and effort to solicit gifts from these large donors, and must pay a disproportionate amount of attention to their views. There is plainly a compelling constitutional need to prevent the wealthy few from having a stronger political voice per vote than the unwealthy many—not because of the persuasiveness of their ideas or how many other voters agree with them, but solely because they give and spend more money than most citizens can afford.

Yet another compelling constitutional interest is served: to more nearly equalize the opportunity of all interested citizens to become candidates for elective federal office, and to reduce the barrier that lack of personal wealth or access to the wealth of others now presents.

As the courts below correctly found, the skyrocketing political "arms race" has far outstripped the pace of inflation. In presidential campaigns, expenditures

rose from $27 million in 1960 to $38 million in 1964 to $56 million in 1968 to $94 million in 1972—an increase of 210 percent in 12 years, five times the 41.3% increase in the consumer price index. In congressional races expenditures rose at comparable rates. (Pp. 67-68, *infra*). A political analogue of Gresham's Law has been at work: the more each candidate has raised and spent, the more his opponent has raised and spent, until the entire process has been cheapened and sheer cost has become a major barrier to political entry. *Bullock* v. *Carter*, *supra*, stands squarely for the constitutional importance of lowering this barrier.

Some reasonable limits on individual and organizational contributions are plainly essential if we are to moderate the undue influence of large contributors on candidates, reduce the pernicious appearance of such influence, and expand participation in the political process. Any restrictive impact of equal evenhanded giving and spending limits on freedom of expression is very indirect. Nothing in these limits touches the content of speech. Giving and spending money are not speech. Action, however, intertwined with speech, is not entitled to the full and special protection of speech itself. *Cox* v. *Louisiana*, 379 U.S. 559 (1965); *United States* v. *O'Brien*, 391 U.S. 367 (1968); *Kovacs* v. *Cooper*, 336 U.S. 77 (1949). As Professor Freund has said:

> "The right to speak is, I submit, more central to the values envisaged by the First Amendment than the right to spend. We are dealing here not so much with the right of personal expression or even association, but with dollars and decibels. And just as the volume of sound may be limited by law, so the volume of dollars may be limited, without violating the First Amendment."

Contribution Limits. The most significant and representative contribution limit in the new statutes is the $1,000 limit on individual gifts to a single candidate. Appellants have presented no convincing proof that this limit is unreasonable on its face. The relatively few persons who make contributions larger than $1,000 have had disproportionate influence over the conduct of political campaigns and the actions of public officials after their election. Contributions of the scale previously permitted create the appearance and widespread public belief of such misconduct. Stewart Mott, the sole appellant who has contributed and intends to contribute more than $1,000 per candidate, himself attempted to exercise such influence by dangling the prospect of $1 million in contributions if a presidential candidate would endorse views compatible with Mott's own.

Moreover, contrary to appellants' allegations, neither challengers nor minor parties depend more on contributions over $1,000 than the incumbents or major parties they oppose. As the courts below found, the record shows that if the excess over $1,000 of all individual contributions were eliminated from the totals raised in the 1972 and 1974 elections, challengers and minor party and independent candidates would have been financially better off or at least no worse off relative to incumbents and major party candidates than they were without the limitation. The $1,000 limitation has not been shown to discriminate against any class of which an appellant is a member, invidiously or otherwise.

Expenditure Ceilings. The expenditure ceilings in the challenged statutes serve compelling constitutional needs. As the courts below found, they reinforce the contribu-

tion limits and help to prevent their wholesale evasion. They also put an effective stop to the skyrocketing political money race, and lower the barrier to entry of additional candidates that the increasing cost of campaigning now raises. They do not touch the content of candidate speech or prevent any candidate from speaking as much as he wants. True, candidates will be equally limited in the number of dollars they can spend to amplify their voices, just as contributors are limited in the dollars they may give. But in Professor Freund's phrase, the spending ceilings deal merely with "dollars and decibels," not with the content or quantity of speech itself.

Appellants have not shown that these equal spending ceilings will deny ample opportunity for candidates to speak freely and to conduct fully effective campaigns. As the courts below found, in only a small fraction of the 1972 and 1974 congressional races did one or both candidates exceed the spending limits that will apply to future races under the new laws. In the 1975 special Senate election in New Hampshire, conducted under the new laws, both candidates lived within the spending limits and managed to turn out a vote much higher than they turned out in the 1974 election when the new spending limits did not apply. The new presidential limits were exceeded in 1972, but the very excesses of this campaign are what most shocked the nation and spurred Congress to provide a remedy. And Mr. Nixon's own Finance Chairman has testified that in his judgment an amount within the new limits would have been sufficient to conduct the 1972 campaign. P. 70, *infra*. Moreover, as shown below, the presidential spending limits are important to the public financing portion of the Act.

Ironically, one basis of appellants' attack is that the ceilings are totally evenhanded. Appellants argue that this equality is unconstitutional because challengers need to spend more than incumbents, and minor party and independent candidates need to spend more than major party candidates. But, as the courts below found, nothing in the record begins to prove that in practice equal ceilings will disfavor any appellant or any class such as challengers for office or third party candidates. To the contrary, in view of the fact that incumbents and major party candidates generally have outspent challengers and minor party and independent candidates, spending ceilings will tend to reduce the spending advantages of the former classes. Appellants have shown no unreasonable restriction or invidious discrimination in the expenditure ceilings to outweigh the important First Amendment and other constitutional values they serve.

As the courts below found, the $1,000 limit on "independent" expenditures by an individual to promote the election or defeat of a candidate stands on the same constitutional footing as a limitation on contributions. Indeed, it is essential to close an otherwise yawning gap in the limitations on contributions, since a donor could otherwise spend as much as he wished for the creation and broadcasting of candidate "commercials" instead of giving the same amount for the same purpose to the candidate's campaign committee. This Court should uphold the provision on its face and decline to rule on any hypothetical applications of it that are not now presented in a concrete case or controversy, for the reasons stated herein and in the Brief for *Amici Curiae* Senators Scott and Kennedy.

Disclosure Requirements. Disclosure presents few constitutional problems. In the oft-quoted phrase of Mr.

Justice Brandeis, sunlight is still "the best of disinfectants." Citizens have a clear First Amendment right to know who contributes substantial amounts to each candidate's campaign and how much each candidate raises and spends. And the availability of this information helps the press to be an effective watchdog of government.

Nothing but speculation supports appellants' suggestion that disclosure will "chill" contributions. Although disclosure requirements for contributions over $100 have been on the statute books since 1910, appellants have produced no significant example of an actual "chilling" effect. Courts have repeatedly rejected such attacks on campaign disclosure laws. *E.g.*, *United States* v. *Finance Committee to Re-Elect the President*, 507 F.2d 1194 (D.C. Cir. 1974). The reporting requirements were adopted for an express and proper public purpose, not for some ulterior and improper deterrent purpose, as in *NAACP* v. *Alabama*, 357 U.S. 449 (1958). They are fundamental protections reasonably related to the public's First Amendment right to know and the need to enforce the remainder of this reform legislation.

As the courts below found, the record provides no basis for the Court to second-guess the judgment of Congress in setting the disclosure floor at contributions of more than $100, particularly since the record does demonstrate that disclosure of relatively small contributions assists in detecting cumulative contributions from closely associated persons.

Similarly, the record provides no basis for concluding that minor party and independent candidates should be exempt from the requirements of disclosure. Citizens have no less need for such information merely because a party's or candidate's adherents are not numerous. Minor

party and independent candidates often have an appreciable impact on elections. Moreover, any such exemption would create an enormous loophole and a strong incentive toward party fractionalization and instability.

Least Restrictive Means. Appellants suggest that laws against bribery and laws requiring the disclosure of large contributions to the major parties are sufficient, and that the provisions of the challenged statutes limiting contributions and expenditures and requiring broader disclosure amount to unconstitutional legislative overkill. But anti-bribery and disclosure laws have been on the books for most of the last fifty years without solving the evils they address. They were in effect throughout the 1972 campaign, but they did little to lessen the dependence of candidates and officeholders on large contributors, to prevent large contributors from wielding or appearing to wield undue influence over government actions, or to slow the accelerating upward spiral of candidate expenditures and the barrier it creates to entry by new candidates.

This Court has upheld laws more restrictive of political expression than those challenged here, where necessary to meet similarly compelling needs. The Hatch Act's direct prohibitions of campaign activity by civil servants, including many activities well within the umbrella of the First Amendment, have been upheld because of the compelling need to serve the constitutional value of impartiality in public administration. *Civil Service Commission* v. *Letter Carriers*, 413 U.S. 548 (1973). And despite many opportunities to rule on the point, this Court has never struck down the statutes directly prohibiting campaign contributions and expenditures by corporations and labor unions—prohibitions that certainly affect First Amendment rights. Many opinions

of this Court recognize the compelling need to prevent the aggregated interests of such large special interest groups from improperly influencing the outcome of federal elections. *See* Mr. Justice Frankfurter's opinion in *United States* v. *UAW*, 352 U.S. 567 (1957), and the dissenting opinion of Mr. Justice Douglas at 598 n. 2.

The elected members of Congress are certainly as expert as any branch of government in determining the measures necessary to regulate the financing of elections so as to prevent corruption, to remove "disparities in voting power based on wealth" (*Bullock* v. *Carter*, 405 U.S. 134, 144 (1972)), and to maintain public confidence in the integrity of the electoral process and of elected officials. Congress has tried varying combinations of laws over the past 50 years and has learned from experience what does and does not work. With the grim record of the 1972 and earlier election scandals before it, Congress devised the comprehensive and complementary set of measures now challenged. As we show and as the court of appeals properly concluded, neither the facts of record nor the wisdom of judicial experience affords any basis for concluding that Congress selected means more restrictive than necessary to meet the compelling needs it faced.

Public Financing of Presidential Campaigns. The public financing provisions of the new law are a creative step toward eliminating the dependence of presidential candidates on private money to fuel their campaigns. Financial assistance to campaigns for federal office is a proper use of the congressional power to raise and spend money to provide for the general welfare. It effectuates the purposes of Articles I and II—as well as the First Amendment—by permitting candidates to reduce their debilitating dependence on large private contributions.

Appellants asserting interests in presidential campaigns have failed to prove that the public financing provisions will injure them in any way, or that they will tilt the balance of political power against any class of which appellants are a part. While the provisions draw distinctions between major, minor, and new parties, a failure to draw such distinctions would violate common sense. "Sometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike." *Jenness* v. *Fortson*, 403 U.S. 431, 442 (1971). Compelling interests justify awarding differential assistance to different types of parties based on their electoral support, and denying assistance to parties and non-party candidates that have not established "a significant modicum of support." *Id.* at 442. The distinctions in the statute are objective and nondiscriminatory on their face. They leave all parties free to move from one level of subsidy to another on the basis of their demonstrated popular support. The statute in no way impairs "the potential fluidity of American political life." *Id.* at 439. Virtually identical distinctions have been upheld in laws defining the rights of candidates to be named on the ballot in *Jenness, supra; Storer* v. *Brown*, 415 U.S. 724 (1974); and *American Party* v. *White*, 415 U.S. 767 (1974).

Under the challenged provisions, candidates of parties which in the previous election achieved more than the five percent "significant modicum of support" approved in *Jenness* will receive public financing during the campaign itself. Since such funding would be impracticable for new parties and parties which achieved less than a "significant modicum" in the previous election, those parties remain free to obtain and spend private contributions before the election; in addition, they are pro-

vided public financing after the election on the basis of the support they have proven. Equal protection of the laws cannot require more equality than the circumstances make possible.

Appellants' theoretical arguments about discrimination are refuted by the facts of previous elections. The challenged statutes impose a ceiling of $20 million on the amount that any presidential candidate may spend, whether or not he accepts public financing. In 1972, well before the election, both major party candidates had easily raised funds in excess of the new ceilings, even when the excess over $1,000 of large contributions is excluded from the calculation. There is no showing that absent the challenged legislation they would fail to do so in 1976. Pre-election entitlements of public funds in 1976 will therefore not increase the financial advantages of major party presidential candidates over other candidates. To the contrary, the public financing and expenditure limits of the new laws will reduce those advantages.

The new laws also provide public financing for party conventions and assistance to all candidates in party primaries through matching of small private contributions. Public financing for the costs of conducting these early stages of the electoral process has already been upheld. *American Party* v. *White*, *supra*. The matching mechanism used to allocate primary assistance is a traditional feature of federal assistance programs, and provides a valid means of assessing a candidate's popular support. The statute's reasonable eligibility requirements for assistance in the primaries, as in the general election, are plainly necessary to avoid waste of public money on the frivolous candidacies that would arise in the absence of such requirements. No feature of these primary and

convention financing provisions has been shown to discriminate invidiously against any appellant.

* * * *

The Constitution does not condemn the nation to continue suffering old abuses that reached new extremes in the 1972 campaign. As the court of appeals concluded, "these latest efforts on the part of our government to cleanse its democratic processes should at least be given a chance to prove themselves. Certainly they should not be rejected because they might have some incidental, not clearly defined, effect on First Amendment freedoms. To do so might be Aesopian in the sense of the dog losing his bone going after its deceptively larger reflection in the water." Ct. App. Op. 1582.

ARGUMENT

I. APPELLANTS HAVE SHOWN NO REASON WHY THIS COURT SHOULD INVALIDATE THE CHALLENGED LEGISLATION BEFORE IT HAS BEEN GIVEN A CHANCE TO WORK

Appellants filed this suit the day after the FECA Amendments took effect, in an effort to wipe the challenged statutes off the books before they could be tested in actual operation. Indeed, appellant Buckley, who unsuccessfully opposed the laws in Congress, introduced an expedited judicial review provision to facilitate his design to challenge the congressional decision in the courts.[6]

Appellants rushed to court with three basic attacks on the statutes. First, they argue that Congress has no power to regulate campaign contributions and expenditures or to provide public financing for campaigns—under any compelling circumstances and regardless of the specific statutory provisions. Congress may not, appellants argue, impose *any* limit on the size of contributions to federal candidates. It may not impose *any* ceiling on a candidate's spending to seek federal office. And it may not provide *any* form of public financing to reduce candidates' dependence on large private contributions. Appellants do concede that Congress may impose some requirements to disclose the identity of contributors.

Second, appellants argue that the *particular* provisions of these statutes are constitutionally infirm. They assert that the contribution and expenditure limits are too low

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to permit "effective" campaigns. They argue that the

[6] Buckley Deposition Tr. at 38-39; 120 Cong. Rec. S5702-08 (daily ed. April 10, 1974).

limits—which are facially evenhanded—are intended to favor and will in fact favor incumbents over challengers and major party candidates over independent and minor party candidates. They also argue that the public financing mechanism has discriminatory effects and that the disclosure thresholds are set so low as to restrict the right of political association.

Third, they attack the composition and powers of the FEC—an attack that is answered by the FEC itself and the *Amici Curiae* Senators Scott and Kennedy and that we do not address.

This case requires the Court to make much less new constitutional law than appellants suggest. Some purely legal issues seem ripe for decision—such as those raised by appellants' claim that their rights are threatened because any limits on contributions or expenditures and any public financing are unconstitutional. The Court should reject appellants' extreme position on those issues, as did six of the eight judges on the court of appeals. Appellants' contentions about the future consequences of the specific statutory provisions should be rejected as speculative and unproven. Precedent and sound judicial policy dictate that major congressional enactments should be tested on their actual—not hypothetical—results.

A. Appellants' "Proof" of Harm is Nothing More Than Allegations of Their Own Beliefs and Speculation About Possible Effects of the Statutes

Appellants attack virtually every provision of these statutes, alleging that each provision will cause constitutional harm to one or more appellants. But appellants bring to this Court little more than theories and beliefs to throw against congressional judgments based on a decade of legislative inquiry and over fifty years

of electoral abuses. Appellants' Br. 14-24.[7] Appellants' "proof" of harm amounts to little more than a litany of their "beliefs" and "desires" *Id.* Judging from their past experiences, their concerns are unfounded. As found by the courts below, appellants' "proof" is speculative and insubstantial, particularly in comparison to the compelling interests the challenged statutes serve. Ct. App. Op. 1540, 1546; *cf. Warth* v. *Seldin*, 95 S. Ct. 2197, 2205-07, 2210, 2214 (1975).

1. *The "Harm" Allegedly Caused by Contribution Limits*

The appellant in this action who presents the clearest case of the effect of the contribution limits is Stewart Mott. The district court found that Mr. Mott is not an average contributor.[8] Indeed, probably not more than a handful of the nation's 70-odd million voters give as much to politicians as he does, or could afford to do so. Nonetheless, most of Mott's contributions to candidates would not be affected by the contribution limits. For example, only 16 out of 110 contributions Mott made to candidates in the congressional races in 1974 were in excess of $1,000. Findings III, Mott ¶ 18, IIB J.A. 726. Moreover, Mr. Mott has pursued a wide variety of non-financial activities to express his political and social views. Mott Deposition Tr. at 41-43; Mott Affidavit, ¶ 16.

[7] Indeed, appellants opposed even the most cursory of fact-finding proceedings below, urging instead that the parties include in their briefs whatever factual material they wished, "for what it's worth." Letter from Brice M. Clagett to Hugh E. Kline, Clerk, United States Court of Appeals for the District of Columbia Circuit (March 3, 1975), in response to that court's inquiry "of the parties as to their expectations regarding the need for the taking of evidence . . . ." *See* I J.A. 74-77.

[8] Memorandum and Order of May 19, 1975 (hereinafter "Findings") III, Mott ¶ 21, IIB J.A. 726. Citations to the Joint Appendix are in the form "[volume] J.A. [page]."

There is no evidence that any of the other appellants will be affected by the $1,000 contribution limit in their capacity as contributors.[9]

Nor is there evidence that any appellant will be harmed by the limits on expenditures of personal and family funds by a candidate. Senator Buckley and his immediate family spent less than $20,000 in both his 1968 and 1970 Senatorial campaigns. Findings III, Buckley ¶ 40, IIB J.A. 707. The statutory limit is $35,000. No Conservative Party candidate has exceeded the limits in Senate or House races. Findings III, Mahoney ¶¶ 12, 13, IIB J.A. 718. Senator McCarthy cannot afford to exceed the $50,000 limit in his 1976 presidential race. Findings III, McCarthy ¶ 28, IIB J.A. 718. Congressman Steiger has not exceeded these limits in the past. Findings III, Steiger ¶ 19, IIB J.A. 732. And the Libertarian Party has not shown that any of its candidates has ever exceeded the limits. Findings III, Crane ¶ 3, IIB J.A. 750.

Appellants also challenge the $5,000 limit on contributions by political committees, yet they produce no evidence that they will be harmed by this limit. Senator McCarthy does not know how many contributions in excess of $5,000 he received in 1968; nor does he have institutional support for his 1976 race. Findings III, McCarthy ¶¶ 9, 23, 25, IIB J.A. 715, 717-18. Congressman Steiger received less than $5,000 from his party in 1966. Findings III, Steiger ¶ 20, IIB J.A. 732.

Appellants have also failed to demonstrate their reliance on contributions in excess of $1,000 in their ca-

[9] For example, Senator Buckley cannot remember contributing more than $1,000 to the campaign of a candidate for federal office, or contributing as much as $2,000 to candidates within any one calendar year. Findings III, Buckley ¶¶ 37, 39, IIB J.A. 707.

pacity as recipients of funds. The party appellants have received the great majority of their contributions in amounts of $1,000 or less.[10] Only 180 persons—out of 40,000 persons who contributed—gave $1,000 or more to Senator Buckley's 1970 campaign. Findings III, Buckley ¶¶ 18, 41, IIB J.A. 703, 707; Weil Deposition Tr. at 7.[11] Many of the other appellants were unable to state in depositions what contributions they have received in excess of $1,000.[12]

Appellant McCarthy asserts that the contribution limits will harm his current race as an independent candidate for President in 1976. Yet his extensive efforts to raise large contributions before the limits went into effect on January 1, 1975 resulted in only five or six contributions in excess of $1,000. Findings III, McCarthy ¶ 23, IIB J.A. 717-18; Monroe Deposition Tr. at 14. McCarthy does not know whether he tried to raise money in small

[10] Findings III, Mahoney ¶¶ 6, 10, IIB J.A. 709-10 (Conservative Party). Of the 4,000 contributors to the Libertarian Party between 1971 and 1975, only 10 have given over $1,000; the contributors who threaten to violate the law in the future have never given over $1,000 in the past. Findings III, Crane ¶¶ 8-9, IIB J.A. 751-52. The American Conservative Union has never received a contribution over $1,000. Findings III, Joy ¶ 13, IIB J.A. 750. The Conservative Victory Fund (CVF) received three contributions over $1,000 in 1972 and one in 1974; the total "overage" was only $14,500 out of total contributions of $220,080. The average contirbution to the CVF is $16. Findings III, Roberts ¶¶ 7, 11, 13, IIB J.A. 743-44. Moreover, the CVF does not anticipate any future gifts in excess of $1,000. Roberts Deposition Tr. at 83.

[11] Furthermore, the treasurer of Senator Buckley's 1970 campaign states that some of these "persons" are actually organizations to which the $5,000 limit will apply and almost all of those who gave $1,000 or more in fact gave *exactly* $1,000. Weil Deposition Tr. at 10, 13, 20, 21.

[12] Findings III, Mahoney ¶ 14, IIB J.A. 711 (Conservative Party); Findings III, McCarthy ¶¶ 4, 9, IIB J.A. 714-15; Findings III, Crane ¶ 6, IIB J.A. 751 (Libertarian Party); Findings III, Reed ¶ 15, IIB J.A. 741 (Mississippi Republican Party).

contributions for the 1968 New Hampshire presidential primary or how much of his $11 million receipts in 1968 was from contributions in excess of $1,000; and he admits that he received large amounts of money in small contributions after that primary. Findings III, McCarthy ¶¶ 4, 6, 9, 10, IIB J.A. 714-15; McCarthy Deposition Tr. at 30-31.

The Chairman of the Mississippi Republican Party alleges that the Party's candidates will be harmed by the contribution limits. Yet he does not know how many individuals contributed more than $1,000 to Mississippi Democratic or Republican candidates for federal office in 1972 and 1974, or how much money was raised in individual contributions larger than $1,000 by candidates of either party in those years. Findings III, Reed ¶ 15, IIB J.A. 741. In fact, in 1974 incumbent Democrats in Mississippi relied more heavily on contributions in excess of $1,000 than did their Republican challengers. Findings III, Reed ¶ 2, IIB J.A. 739; *id.* IIC, ¶¶ 2, 16, IIB J.A. 587, 698.

The National Chairman of the Libertarian Party claims his party has a special need to receive contributions in excess of $1,000. But the evidence shows that large contributions play a miniscule role in the Party's operations. The Chairman does not know how many contributions to any of the Party's federal candidates have been in excess of $1,000.[13] Approximately five individuals told the Chairman that they may make gifts exceeding the $1,000 limitation, but none of those individuals has

[13] The reports filed for those candidates under the FECA do not show any contributions in excess of $1,000. The Chairman estimates that 10 out of 4,000 contributions to the Party have been individual contributions in excess of $1,000. Findings III, Crane ¶¶ 6-8, IIB J.A. 751.

made such gifts in the past. Findings III, Crane ¶ 9, IIB J.A. 752.

Appellant Conservative Victory Fund (CVF) alleges that it supports mostly challengers to incumbents; it objects to the $5,000 limit on the amount it can contribute as a registered political committee to any single candidate for federal office. In 1972 and 1974, CVF contributed only $14,450 in excess of the $5,000 limit; only approximately 14 percent of this went to challengers. Findings III, Roberts ¶ 7, IIB J.A. 743-44; Roberts Affidavit, ¶¶ 9, 16.

The district court found that appellant American Conservative Union (ACU) has terminated its registration as a political committee and has no present intention to make contributions to candidates for federal office. Findings III, Joy ¶ 3, IIB J.A. 747-48. Between 1972 and 1975, ACU made only one direct contribution to a candidate for federal office, in the sum of $2,500. Findings III, Joy ¶ 12, IIB J.A. 749.

2. *The "Harm" Allegedly Caused by Expenditure Ceilings*

None of the individual appellants who have in the past been candidates for election to federal office, or the party appellants who have sponsored such candidates, appears to have exceeded what would have been the expenditure limits applicable to them under the challenged legislation.

Appellant Buckley spent about $1.4 million in his 1970 Senate race in New York.[14] Incumbent Republican

[14] Buckley Deposition, Ex. 1, at vi, ix, x; Weil Deposition Tr. at 5-7.

Senator Goodell spent $1.0 million, while Buckley's Democratic opponent Representative Ottinger spent $4.7 million. Buckley Deposition, Ex. 1, at vi. The applicable combined overall limit (for primary and general elections; *see* Appendix A) would have been approximately $3.0 million. Hence, the limit would have reduced the spending of one of Buckley's opponents in 1970—but not Buckley's own spending.

Appellant Conservative Party of the State of New York does not make expenditures on behalf of candidates, Findings III, Mahoney ¶ 11, IIB J.A. 71; hence, the only harm it could suffer under the challenged ceilings would be harm to the candidates it endorses. Yet the Chairman testified that in every race the Conservative Party candidate has been outspent, Mahoney Deposition Tr. at 44; they have in fact been vastly outspent.[15] Hence, the Conservative Party can only be helped by the legislation it challenges. Furthermore, the Chairman of the Party testified that Ms. Keating's Senate campaign in 1970, run on $190,000, was "successful" in his view. Findings III, Mahoney ¶ 17, IIB J.A. 712.

Appellant Steiger has never spent more than the new limits allow. He spent less than $64,000 in his 1966 House race as a challenger and in his 1968, 1970, 1972, and 1974 re-election races. Furthermore, Congressman Steiger has not shown that the spending limits will

[15] In the 1974 Senate race, the Conservative candidate Keating spent $192,462. The Republican incumbent Javits spent $1,090,473, while the Democrat Clark spent $855,576. Findings IIA, ¶ 6, IIA J.A. 392. Mahoney Deposition Tr. at 43, 62. In House races the Conservative Party fielded candidates in 19 of the 39 congressional districts of New York. All of these 19 were outspent by all major party opponents. Findings IIA, ¶ 5, IIA J.A. 361-66; the same pattern is apparent in the 1972 House races. *See* Findings IIA, ¶¶ 2, 3, IIA J.A. 298-302.

preclude his making a successful campaign for the Senate against an incumbent Senator. Indeed, he has not yet declared as a 1976 candidate for the Senate.

Appellant McCarthy admits that independent and minor party candidates have difficulty matching the spending of the major parties. Findings III, McCarthy ¶ 29, IIB J.A. 718. He had raised only $59,000 for his 1976 campaign when he testified, but was "hopeful" of raising $24 million. *Id.* ¶¶ 22-23, IIB J.A. 717-18. Under the new ceilings, he will be able to spend $36 million if he can raise it. *See* p. 153, *infra.*

Past experience indicates that the Libertarian Party's spending will not approach the statutory limits. The campaign of the Libertarian Party candidate for President in 1972 spent between $5,000 and $6,000. Findings III, Crane ¶ 10, IIB J.A. 752.

The Chairman of the Mississippi Republican Party does not know how much money Mississippi Republican and Democratic congressional candidates spent in 1972 or 1974, but the facts found by the district court show that Mississippi Republican challengers to incumbents may be helped by the expenditure limits. In the past, Mississippi's incumbent Democratic Senators have grossly outspent their Republican opponents. *See, e.g.*, Findings III, Reed ¶ 2, IIB J.A. 739; *id.* IIA, ¶ 4, IIA J.A. 323.

The Executive Director of appellant CVF testified that he does not know whether the Fund would be harmed by the expenditure limits and does not know how much challengers supported by the CVF spent in 1970, 1972, or 1974. Roberts Deposition Tr. at 34-37, 41A.

3. *The "Harm" Allegedly Caused by Disclosure*

Disclosure of contributions over $100 has been required since 1910. Yet, as the court of appeals found, the record contains "only scant evidence tending to show a 'chilling effect' resulting from disclosure, and only a skimpy indication of harassment of those whose contributions were disclosed in the 1972 and 1974 elections. . . ." Ct. App. Op. 1546 (footnote omitted).

The First Amended Complaint is virtually devoid of any allegation that any appellant will cease making political contributions because of the disclosure provisions of the challenged statutes. On the contrary, the First Amended Complaint, appellants' affidavits, and appellants' deposition testimony demonstrate that appellants have contributed and intend to contribute reportable amounts in the future despite the disclosure requirements.

Appellant Mott testified that he favors strong reporting and disclosure requirements such as those contained in the statute he challenges. Mott Deposition Tr. at 30-31. Indeed, Mott's description of his past contributions in his affidavit demonstrates that disclosure has no deterrent effect whatsoever on him.

Furthermore, the appellant candidates and parties have failed to prove that the statute will deter contributions to them. The district court was unable to find, with one inconsequential exception, any facts tending to prove that a potential contributor has been deterred from contributing by disclosure or that a contributor has been subjected to any reprisal in consequence of disclosure.[16] Ap-

[16] The single exception was based on hearsay. Two persons solicited by a Ms. Wertheimer for a contribution to a Libertarian Party gubernatorial campaign in New York purportedly refused to contribute because they were unwilling to have their names

pellant Buckley testified that he has never heard that any individual has refused to contribute to his campaigns or would refuse to contribute to any future campaigns because of disclosure. Buckley Deposition Tr. at 71-72. *See also* Findings III, Buckley ¶¶ 26, 33, IIB J.A. 705, 706.

Similarly, the district court found that the State Chairman of appellant Conservative Party had no evidence that any individual whose name had been disclosed as a contributor to his party had been subjected to harassment or reprisal as a result of such disclosure. Findings II, Mahoney ¶ 9, IIB J.A. 711.

Although appellant McCarthy testified that two individuals had been reluctant to contribute to his 1976 campaign because of disclosure (McCarthy Deposition Tr. at 17-18, 67-70), the district court—apparently unconvinced because of other evidence in the record [17]—did not find this as a fact. McCarthy further testified that he was unaware of any reprisals taken against individuals because of disclosure of their contributions to his prior political campaigns. McCarthy Deposition Tr. at 102. *See also* Findings III, Monroe ¶ 11, IIB J.A. 720.

The district court found that the Chairman of appellant Mississippi Republican Party knew of no individual making ongoing contributions to the party who had told him he would withdraw his support if his name

disclosed. Findings III, Wertheimer ¶ 6, IIB J.A. 737. The district court found that Ms. Wertheimer had no evidence of any incident of harassment or reprisal against persons whose names were reported as contributors to the Libertarian Party during that campaign. *Id.* ¶ 11, IIB J.A. 738.

[17] McCarthy Deposition Tr. at 17-18, 67-70; Monroe Deposition Tr. at 41-44.

were disclosed. Findings III, Reed ¶ 6, IIB J.A. 740. The district court further found that the Chairman had no specific evidence that anyone was harassed as a result of the FECA's reporting requirements. *Id.* ¶ 14, IIB J.A. 741.

The district court found that appellant ACU had reported the names of 137 contributors pursuant to the FECA and the FECA Amendments. Findings III, Joy ¶ 8, IIB J.A. 748-49. But the court found that ACU's Treasurer had no evidence that any contributor had been harassed as a result of the disclosure or that any person would refuse to contribute because his name would be disclosed. *Id.*

The district court found that the National Chairman of appellant Libertarian Party knew of no contributor to his party or its candidates who had incurred harm or refused to contribute as a result of disclosure of his name as a contributor. Findings III, Crane ¶¶ 12-13, IIB J.A. 752; Crane Deposition Tr. at 30.

Furthermore, neither appellant Steiger nor the Executive Director of appellant CVF testified to any knowledge about actual deterrent effects from disclosure. Steiger Deposition, *passim*; Roberts Deposition, *passim*.

4. *The "Harm" Allegedly Caused by Public Financing of Presidential Campaigns*

The district court's findings show that no appellant is in a position to be harmed by the public financing provisions. McCarthy is an independent or "new party" candidate [18] and testified he *will not accept* public fi-

[18] *See* pp. 223-25, *infra*.

nancing for his presidential campaign even if he receives enough votes to qualify for it after the election. Findings III, McCarthy ¶ 30, IIB J.A. 718. Appellant Libertarian Party will also refuse public funds if it qualifies after the 1976 presidential election. Crane Deposition Tr. at 32-33, 62-63.

Appellant Conservative Party has never nominated a candidate for President who was not also the presidential candidate of one of the two major parties (Findings III, Mahoney ¶ 15, IIB J.A. 711; Mahoney Deposition Tr. at 39-40) and thus independently entitled to the maximum amount of public financing. 26 U.S.C. § 9004(a)(1).

B. There Are No "Unique Factors" That Render These Laws Constitutionally Suspect

Appellants devote much of their brief to the contention that the court of appeals "failed to give this legislation adequate scrutiny." *E.g.*, Appellants' Br. 36. There is no dispute in this case about the standard of review. These statutes have incidental effects on vital First Amendment interests and must—like any statutes affecting similar interests—be shown to serve "compelling needs" and to be no more restrictive than necessary to serve those needs. The court of appeals expressly applied those standards. It agreed with appellants that "strict judicial scrutiny of the challenged provisions is appropriate." Ct. App. Op. 1519.

The court of appeals "closely scrutinized Plaintiffs' contentions" and concluded that these statutes serve "a clear and compelling interest in safeguarding the integrity of elections and avoiding the unnecessary influence of wealth" and that "the statute taken as a whole affirmatively enhances First Amendment values."

Id. at 1517. As we show in Part IV, these conclusions are correct.

Appellants say that Congress in enacting campaign reform laws faces "a plain conflict of interest," because such laws may "affect the political balance between challengers and incumbents." Appellants' Br. 27. They suggest repeatedly that these laws are an attempt by incumbents to guarantee their own reelection. That suggestion defames the national legislature and is unsupported by the record.

It is settled that "this Court will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive." *United States* v. *O'Brien*, 391 U.S. 367, 383 (1968); *Arizona* v. *California*, 283 U.S. 423, 456 (1931) (Brandeis, J.). The Court said in *O'Brien*:

> "Inquiries into congressional motives or purposes are a hazardous matter. When the issue is simply the interpretation of legislation, the Court will look to statements by legislators for guidance as to the purpose of the legislature, because the benefit to sound decision-making in this circumstance is thought sufficient to risk the possibility of misreading Congress' purpose. It is entirely a different matter when we are asked to void a statute that is, under well-settled criteria, constitutional on its face, on the basis of what fewer than a handful of Congressmen said about it. What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it, and the stakes are sufficiently high for us to eschew guesswork." 391 U.S. at 383-84 (footnote omitted).

These statutes are completely evenhanded as between incumbents and challengers and among candidates of all

points of view. The available evidence suggests they will help, not hinder, challengers in their attempt to match incumbents' spending. *See* pp. 112-29, 143-51, *infra*. Thus, even if some incumbent congressmen had hoped to benefit themselves, that hope would be no ground for invalidating the laws.

In any event, the members of Congress did not conceive and enact these laws to promote their own financial advantages in future campaigns. Since incumbents have always had a great advantage in fund-raising, inertia and self-advantage might well have resulted in no laws being enacted. That Congress acted so decisively is less suggestive of self-interest than of appropriate legislative response to a felt public demand.[19] If any concern for reelection motivated the members of Congress in enacting these laws, it was the legitimate concern of elected representatives that a vote against campaign financing reform would anger their constituents.[20]

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[19] Appellants' insinuation that incumbents passed these laws to protect themselves is countered by appellants' own argument, made elsewhere, that the laws result from the overreaction of politicians to intense public sentiment arising out of Watergate. Appellants' Br. 37-38.

[20] Public sentiment increasingly favors these laws. *See* Findings I, ¶ 133, IIA J.A. 180-89. Appellants argue that "the latest Harris poll" is not a guide to interpreting the First Amendment. Appellants' Br. 38-39. We agree. However, the growing majority of the American public that supports these laws refutes appellants' claim that Congress enacted them in its own interest rather than that of the public. It also refutes appellants' irrelevant assertion that "[t]he tide" has turned against this legislation. *Id.* at 74.

Major newspapers across the country continue to voice strong editorial support for these laws. *E.g.*, "Hope for the Election Reform Act," The Louisville Times, Aug. 19, 1975; "A Chance to Prove Itself," Philadelphia Bulletin, Aug. 20, 1975; "Good News on the Campaign Front," Baltimore Sun, Aug. 19, 1975; "Election Reform Upheld," Albuquerque Journal, Aug. 17, 1975; "A Right to Spend?," Des Moines Register, Sept. 7, 1975; "Free Speech, Big Money,"

Moreover, reality contradicts appellants' notion that Congress is a monolithic group of incumbents, all of whom share the identical interest in the reelection of all. Congress consists of 535 individuals, each with his own constituency, ideology, party—and political problems. The self-interest of an individual Congressman depends on such highly variable factors as his personal wealth, his access to wealthy contributors, and his perception of how his next political rival will fare on those counts. There is no reason for this Court to assume that these facially evenhanded statutes are an ingenious attempt by congressional incumbents to pull the ladder up after themselves, and that incumbent appellants Buckley and Steiger stand alone in virtuous self-denial.

Under our Constitution, Congress is the source of *all* legislation. To suggest that campaign reform laws are inherently suspect because they will affect the members who vote on them is to argue that the Constitution permits no legislative remedy for abuses of the electoral process. That nihilistic proposition answers itself.

C. Settled Judicial Policy Dictates That These Statutes Should Be Given a Chance to Operate as Congress Intended

After years of intensive study, Congress concluded that the evils plaguing the electoral process present a compelling need for an effective remedy. Congress studied

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The New York Times, Aug. 16, 1975; "The Election Reform Act in Court," Sacramento Bee, Aug. 31, 1975; "A Boost for Campaign Reform," Christian Science Monitor, Aug. 21, 1975; "Costly Campaigns and Free Speech," The Washington Post, Aug. 21, 1975; "Money and Politics," Newark Star Ledger, Aug. 19, 1975.

Congress is preparing to take a further step by extending public financing to congressional campaigns. *See* note 113, *infra*.

and tried many alternatives and decided that the reforms achieved by the challenged statutes will work without producing the harmful effects that appellants predict. Congress is in a far better position than are either the appellants or this Court to make these essentially practical, factual assessments of the probable effects the laws will have. At least until the actual effects can be seen, the Court should defer to those legislative judgments.

> "[I]t is clear to us that proper regard for the special function of Congress in making determinations of legislative fact compels this Court to respect those determinations unless they are contradicted by evidence far stronger than anything that has been adduced . . . ." *Oregon* v. *Mitchell*, 400 U.S. 112, 240 (1970) (Brennan, White & Marshall, JJ.).[21]

The Court followed such a course in upholding the Voting Rights Act of 1965 in *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966). In that case, a sweeping and innovative Act of Congress was challenged on the ground that it abridged constitutional rights as fundamental as the First Amendment rights asserted here. The Court sustained the law, placing much reliance on congressional findings and judgments very similar to those that prompted Congress to pass these statutes. The Court said:

> "The constitutional propriety of the Voting Rights Act of 1965 must be judged with reference to the historical experience which it reflects." *Id.* at 308.

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[21] *See also California Bankers Ass'n* v. *Shultz*, 416 U.S. 21, 75-76 (1974); *Golden* v. *Zwickler*, 394 U.S. 103, 110 (1969); *United States* v. *Finance Comm. to Re-Elect the President*, 507 F.2d 1194, 1200 (D.C. Cir. 1974); *Gomez* v. *Wilson*, 477 F.2d 411, 416 (D.C. Cir. 1973); Cox, *The Role of Congress in Constitutional Determinations*, 40 U. Cin. L. Rev. 199, 209 (1971).

The Court accepted the congressional judgment about the need for the law, emphasizing two points: that "Congress felt itself confronted by an insidious and pervasive evil," and that "Congress concluded that the unsuccessful remedies which it had prescribed in the past would have to be replaced by sterner and more elaborate measures." *Id.* at 309-19. The situation is identical here.

Many of appellants' arguments attack congressional judgments about where the lines should be drawn to achieve effective reform. Congress is peculiarly well suited to make those judgments, especially where, as here, the permissibility of the lines drawn turns less on abstract constitutional principles than on the *practical impact of the laws in operation*. Courts traditionally eschew second-guessing Congress in such situations, even where the lines drawn by Congress are alleged to violate First Amendment or other fundamental rights.[22]

The Court should not invalidate these statutes by finding constitutional injury that depends on the "concurrence of . . . contingent events . . . too speculative to warrant anticipatory judicial determinations." *Eccles* v. *Peoples Bank*, 333 U.S. 426, 432 (1948); *Longshoremen's Union* v. *Boyd*, 347 U.S. 222, 224 (1954). This case fits perfectly Mr. Justice Frankfurter's warning that:

> "Counsel are prone to shape litigation, so far as it is within their control, in order to secure comprehensive rulings. . . . Such desire on their part is not diffi-

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[22] *See, e.g., Oregon* v. *Mitchell*, 400 U.S. 112, 142-44 (Douglas, J.), 206-07 (Harlan, J.), 240-49, 278-81 (Brennan, J., joined by White and Marshall, JJ.) 282 (Stewart, J., joined by Burger, C.J., and Blackmun, J.) (1970); *Pell* v. *Procunier*, 417 U.S. 817, 827-28 (1974); *United States* v. *Finance Comm. to Re-Elect the President*, 507 F.2d 1194, 1200-02 (D.C. Cir. 1974); *Cox, supra* note 21, at 223.

cult to appreciate. But the Court has its responsibility. Matter now buried under abstract constitutional issues may, by the elucidation of a trial, be brought to the surface, and in the outcome constitutional questions may disappear. Allegations of the indictment hypothetically framed to elicit a ruling from this Court or based upon misunderstanding of the facts may not survive the test of proof." *United States* v. *UAW*, 352 U.S. 567, 592 (1957).

See Rescue Army v. *Municipal Court*, 331 U.S. 549 (1947); *Ashwander* v. *Tennessee Valley Authority*, 297 U.S. 288, 341 (1936) (Brandeis, J., concurring).[23]

The Court has applied this principle in First Amendment litigation strikingly similar to the case at bar. When a challenge to the Hatch Act first came here, it was based on allegations of hypothetical First Amendment injury comparable to those of the present case. The Court refused to declare the Act unconstitutional:

> "The power of courts, and ultimately of this Court, to pass upon the constitutionality of acts of Congress arises only when the interests of litigants require the use of this judicial authority for their protection against actual interference. A hypothetical threat is not enough. We can only speculate as to the kinds of political activity the appellants desire to engage in or as to the contents of their proposed public statements or the circumstances of their publication. It would not accord with judicial responsibility to adjudge, in a matter involving constitutionality, between the free-

[23] "Indeed, one principal justification for giving the independent review of legislation to the judiciary lies in the ability of a court to weigh constitutional claims on the basis of experience which was not available when the legislature acted."

Karst, *Legislative Facts in Constitutional Litigation*, 1960 Sup. Ct. Rev. 75, 76.

> dom of the individual and the requirements of public order except when definite rights appear upon the one side and definite prejudicial interferences upon the other." *United Public Workers* v. *Mitchell*, 330 U.S. 75, 89-90 (1947) (footnote omitted).[24]

The subsequent history of Hatch Act litigation proves the wisdom of the Court's rejection of the First Amendment attack in *Mitchell*. When the issue returned here in *Civil Service Commission* v. *Letter Carriers*, 413 U.S. 548 (1973), the Court was presented with the actual or threatened enforcement of the Act against specific conduct, against the backdrop of years of experience with its operation. *See id.* at 551-53, 574-81. The Court said:

> "The Commission was to *issue notice, hold hearings, adjudicate, and enforce.* This process, inevitably and predictably, would *entail further development of the law* . . . and would be productive of a *more refined definition* of what conduct would or would not violate the statutory prohibition of taking an active part in political management and political campaigns.
>
> ". . . It is to these regulations purporting to construe § 7324 *as actually applied in practice*, as well as to the statute itself, with its various exclusions, that we address ourselves in rejecting the claim that the Act is unconstitutionally vague and overbroad." *Id.* at 575 (emphasis added and citations omitted).

In this context, the Court upheld the law. We submit that the same principle of judicial responsibility applies

[24] A concrete claim was presented by one plaintiff, Poole, whom the Civil Service Commission had charged with a specific violation of its regulations. The Court upheld the constitutionality of the statute as applied to that specific conduct. 330 U.S. at 91-93.

here. *Compare Block* v. *Hirsh*, 256 U.S. 135, 153 (1921), *with Chastleton Corp.* v. *Sinclair*, 264 U.S. 543 (1924).

II. CONGRESS HAS POWER TO REGULATE FEDERAL CAMPAIGN FINANCING

As the court of appeals held, "[t]he constitutional power of Congress to regulate federal elections (including the pre-election stages) is extensive." Ct. App. Op. 1516-17. This power arises from the express provision of Article I authorizing Congress to regulate the "Manner" of conducting congressional elections [25] and from the implied authorization in Article II to regulate presidential elections. If Congress were powerless to assure the fairness and integrity of the elections by which national officers are chosen, the very legitimacy of the Government would be jeopardized.[26]

In a series of decisions beginning in 1879, the Court has held that the authority of Congress under Article I encompasses any measures Congress reasonably believes will help to ensure that elections are fairly conducted and provide the electorate an effective means to choose its representatives.[27] The Court has held that Article II confers an equally broad implied power to

[25] "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the places of chusing Senators." U.S. Const., art. I, § 4.

[26] *Cf. Reynolds* v. *Sims*, 377 U.S. 533, 554-55, 562-68 (1964).

[27] *See, e.g., Ex parte Siebold*, 100 U.S. 371 (1879) (provision of election marshals to supervise congressional elections); *Ex parte Yarbrough*, 110 U.S. 651 (1884) (protection of voters against intimidation, force, or hindrance in exercise of right to vote); *United States* v. *Mosley*, 238 U.S. 383 (1915) (protection of accuracy of vote counting and reporting).

protect presidential elections. In *Burroughs* v. *United States*, 290 U.S. 534 (1934), the Court upheld the record-keeping and reporting requirements of the Federal Corrupt Practices Act of 1925,[28] which were similar in many respects to those of the challenged statutes, as applied to presidential elections. The Court said:

> "To say that Congress is without power to pass appropriate legislation to safeguard . . . [a presidential] election from the improper use of money to influence the result is to deny to the nation in a vital particular the power of self-protection. Congress, undoubtedly, possesses that power, as it possesses every other power essential to preserve the departments and institutions of the general government from impairment or destruction, whether threatened by force or by corruption.
>
> . . . . .
>
> "If it has not this power it is left helpless before the two great natural and historical enemies of all republics, open violence and insidious corruption." 290 U.S. at 545, 546.

In succeeding years, the Court has sustained the constitutionality of several congressional enactments regulating federal elections.[29] It has never held any of these laws to be beyond the scope of Congress' power.[30] The

[28] 2 U.S.C. §§ 241-56 (1970) (repealed). That Act was repealed and replaced by the challenged statutes.

[29] *See, e.g., South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966); *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966); *Oregon* v. *Mitchell*, 400 U.S. 112 (1970) (opinion of Mr. Justice Black); *cf. United States* v. *Harriss*, 347 U.S. 612 (1954).

[30] In 1921 the Court ruled that the power to regulate congressional elections did not extend to primaries. *Newberry* v. *United States*, 256 U.S. 232 (1921). That ruling was overturned in *United States* v. *Classic*, 313 U.S. 299 (1941), and it is now clear that all

existence and breadth of that power are now beyond dispute.[31]

Congress has great latitude in choosing means to protect the electoral process. As the Court said in *Burroughs*:

> "The power of Congress to protect the election of President and Vice-President from corruption being clear, the choice of means to that end presents a question primarily addressed to the judgment of Congress." 290 U.S. at 547.

Congress may, as it repeatedly has, directly regulate individual conduct in order to prevent practices injurious to the electoral process. Or it may use its taxing and spending powers to promote that same end—just as it may to achieve any other permissible goal.[32] The legislation challenged in this case takes both those routes.

III. CONGRESS FOUND A COMPELLING NEED TO REMEDY SERIOUS ABUSES OF THE ELECTORAL PROCESS

Popular election of Congress and the President anchors the American system of government. But age-old abuses

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stages of the electoral process—including primaries and conventions—are within the reach of Congress' power. *See, e.g., Smith* v. *Allwright*, 321 U.S. 649 (1944); *Terry* v. *Adams*, 345 U.S. 461 (1953); *cf. Developments in the Law—Elections*, 88 Harv. L. Rev. 1111, 1182-84 (1975).

[31] T. Emerson, The System of Freedom of Expression 635-40 (1970); A. Rosenthal, Federal Regulation of Campaign Finance: Some Constitutional Questions 12-19 (1971); Bickel, *Commentary*, in *id.* at 64; Cox, *Commentary*, in *id.* at 68; Freund, *Commentary*, in *id.* at 71.

[32] *See* U.S. Const. art. I., § 8, cl. 1; *United States* v. *Butler*, 297 U.S. 1 (1936); *Steward Machine Co.* v. *Davis*, 301 U.S. 548 (1937); *Helvering* v. *Davis*, 301 U.S. 619 (1937).

and newer manifestations of the role of money have impeached the integrity of the electoral process. For more than half a century, Congress has enacted various measures to deter these evils,[33] but they persist. The 1972 election and its aftermath shocked the nation, and the public demanded that Congress take further corrective measures. Congress responded by enacting these laws to end the debilitating, almost drug-like dependence of candidates on large campaign contributions.

Congress acted after considering a formidable body of evidence about the consequences of unfettered private financing of federal election campaigns. A familiarity with that evidence is critical to judicial review of the remedies Congress enacted. As Mr. Justice Frankfurter instructed with respect to an earlier campaign reform statute:

> "Appreciation of the circumstances that begot this statute is necessary for its understanding, and understanding of it is necessary for adjudication of the legal problems before us. Speaking broadly, what is involved here is the integrity of our electoral process, and, not less, the responsibility of the individual citizen for the successful functioning of that process. This case thus raises issues not less than basic to a democratic society." *United States* v. *UAW*, 352 U.S. 567, 570 (1957).

The legislative record shows that campaign financing abuses have threatened the very legitimacy of federal elections and that reform was imperative.

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[33] Federal Corrupt Practices Act of 1910, 36 Stat. 822-24, as amended, 37 Stat. 25-29 (1911); Federal Corrupt Practices Act of 1925, 43 Stat. 1070, 2 U.S.C. §§ 241-256 (repealed); Hatch Act of 1940, 54 Stat. 767; Federal Election Campaign Act of 1971, 86 Stat. 11, 2 U.S.C. §§ 431-454. *See* Ct. App. Op. 1589-93.

A. Congress Found that Dependence on Large Campaign Contributions Has Exposed Candidates and Elected Officials to Improper Influence

Congress rightly concluded on the basis of voluminous evidence that the dependence of candidates on large contributions is one of the cardinal flaws in past campaign financing practices. Congress found and the district court confirmed that the need to finance expensive campaigns forces candidates and their solicitors to seek large contributions from wealthy individuals and groups. Because governmental decisions often vitally affect the interests of those individuals and groups, large contributions are often made to further private interests by facilitating access to government officials or influencing governmental decisions. In return, elected officials have tended to afford special access and treatment to large contributors.[34] Appellants' image of the disinterested contributor motivated by general rather than personal interests may sometimes be true but generally does not mirror reality.[35]

The relationship between candidates and potential large contributors is symbiotic: The candidates depend on monied and special interests to make the large gifts they believe necessary to finance their costly campaigns; monied and special interests depend on the decisions made by elected officials to advance their private goals. The "dangers and pressures of conflict" and abuse on both sides of this relationship are obvious.[36] The appearance

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[34] D. Dunn, Financing Presidential Campaigns 19-20 (1972).

[35] *See* S. Rep. No. 689, 93d Cong., 2d Sess. 4 (1974); Findings I, ¶¶ 108, 110, 118, 170, IIA J.A. 147-48, 153, 266.

[36] *See Hearings on S. 1103, S. 1954, and S. 2417 Before the Subcomm. on Privileges and Elections of the Senate Comm. on Rules and Administration*, 93d Cong., 1st Sess. 72 (1973); S. Rep. No. 689, *supra* note 35, at 4. *See also* Peabody, *et al.*, To Enact a Law: Congress and Campaign Financing (1972); Lobel, *Federal Control of Campaign Contributions*, 51 Minn. L. Rev. 1, 25 (1966); Note, *Campaign Finance Reform: Pollution Control for the Smoke-Filled Rooms?*, 23 Case W. Res. L. Rev. 631, 637 (1972); Note, *The Constitutionality of Financial Disclosure Laws*, 59 Cornell L. Rev. 345, 346 n. 11 (1974); Comment, *The Constitutionality of Restrictions on Individual Contributions to Candidates in Federal Elections*, 122 U. Pa. L. Rev. 1609 (1974).

of impropriety is inescapable—an appearance that is as corrosive as the reality.[37] And the ugly fact of impropriety and illegality was demonstrated in 1972 beyond the point of surfeit.

The record before Congress was replete with specific examples of improper attempts to obtain governmental favor in return for large campaign contributions. *See* Findings I, ¶¶ 159-64, IIA J.A. 254-55. For example, the Senate Select Committee on Presidential Campaign Activities learned that dairy organizations attempted to gain access to government officials of both parties and to influence governmental decisions affecting them by making large legal and illegal campaign contributions. Findings I, ¶ 158, IIA J.A. 254. One dairy executive testified that his organization decided to contribute $100,000 in illegal corporate funds to Herbert Kalmbach, a Nixon fund-raiser, in 1969—after the election—because

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[37] Senator James Abourezk testified that:

> "It is really the appearance of corruption that harms us, I think, more than any corruption that does go on, because there are certain controversial amendments up today that I would like to vote for, but because I received contributions from dairy farmers around the country, I am almost afraid to vote for them because it is set up now in the press that anybody who does vote for them who has taken money from the dairy farmers has been bought off."

Hearings on S. 372 Before the Subcomm. on Privileges and Elections of the Senate Comm. on Rules and Administration, 93d Cong., 1st Sess. 207 (1973).

"it appeared we were not going to get anyplace if we did not." [38] Kalmbach explained his understanding of the arrangement to the Senate as follows:

> "[I]n return for that [$100,000] contribution it would be possible for me [Kalmbach] to arrange for several appointments with various people within the White House in order for . . . the attorneys for the milk producers to meet with the White House officials to present a case on their behalf." *Final Report*, *supra* note 38, at 593 (footnote omitted).

Kalmbach further testified that a dairy attorney had advised him that the $100,000 contribution had been made in connection with the dairy group's "objective" of achieving "90 percent price supports for dairy farmers." *Id.* at 592.

The dairy industry pledged to contribute $2,000,000 to the 1972 Republican presidential campaign, a pledge of which the President and other White House officials were aware. *Id.* at 612-14, 616. On March 23, 1971, after a meeting with dairy organization representatives, the President decided to increase milk price supports, thereby reversing a decision of his Secretary of Agriculture. During the next two days, before this decision was announced, White House officials and Kalmbach held a series of meetings with dairy organization officials. In describing these meetings to the Senate, Kalmbach admitted the relationship between the decision and the pledge of large contributions as follows:

> "[M]y understanding was simply . . . that the price support would be announced the next day; and that in view of that fact, . . . the pledge [by the dairy organizations of $2,000,000] to the President's 1972 campaign was being reaffirmed . . . ." *Id.* at 664; *see id.* at 645-48.

[38] *Final Report of the Senate Select Comm. on Presidential Campaign Activities*, S. Rep. No. 981, 93d Cong., 2d Sess. 581 (1974) (hereinafter cited as "*Final Report*").

The efforts of the dairy organizations were not restricted to a single party. Those organizations also made large legal and illegal contributions to Representative Wilbur Mills' Democratic presidential campaign; Mills as Chairman of the House Ways and Means Committee was a key figure on congressional action concerning milk price supports. *Id.* at 905, 908-20. (*See* Findings I, ¶ 103, IIA J.A. 101-07, for a list of contributions by these dairy organizations during 1972.) [39]

That both the solicitors and the donors of such contributions expect them to influence governmental decisions is vividly illustrated by the following letter written by a dairy official who attended the March 23 meeting with the President:

> "The facts of life are that the economic welfare of dairymen does depend a great deal on political action. If dairymen are to receive their fair share of the governmental financial pie that we all pay for, we must have friends in Government. I have become increasingly aware that the sincere and soft voice of the dairy farmer is no match for the jingle of hard currencies put in the campaign funds of the politicians by the vegetable fat interests, labor, oil, steel, airlines, and others. . . .

[39] Appellants argue that these laws contain loopholes that would permit the dairy interests' huge contributions to continue. Appellants' Br. 69-72. They are mistaken. *See* pp. 130-32, *infra*. Appellants also assert that the vast majority of special interest contributions have been small. Appellants' Br. 66. That unsupported assertion is refuted by the record of contributions by dairy groups, labor groups, and others.

"On March 23, 1971, . . . I sat in the Cabinet Room of the White House across the table from the President . . . and heard him compliment the dairymen. . . . He said, 'You people are my friends and I appreciate it.' Two days later an order came from the U.S. Department of Agriculture increasing the support price for milk to 85 percent of parity, which added from $500 to $700 million to dairy farmers [sic] milk checks. We dairymen cannot afford to overlook this kind of economic benefits. Whether we like it or not, this is the way the system works." *Final Report*, *supra* note 38, at 671 (footnote omitted).

Similar improprieties occurred in connection with ambassadorial appointments. Over $1.7 million in contributions to the winning 1972 presidential campaign can be attributed in whole or in part to persons who received ambassadorial appointments from the incumbent Administration. *Id.* at 493; Findings I, ¶ 124, IIA J.A. 155. To recite only a few: the former Ambassador to Great Britain contributed $254,000; the former Ambassador to Switzerland, $100,000; the Ambassador to Luxembourg, $300,000; the Ambassador to Belgium, $115,100; the Ambassador to The Netherlands, $100,900; the former Ambassador to Austria, $100,500; the former Ambassador to France, $303,000; the former Ambassador to Jamaica, $103,500; and the former Ambassador to Trinidad and Tobago, $100,500. *Id.* It is well known that Presidents of both parties have long named large contributors to ambassadorships.

In confirmation of what this pattern suggests, Herbert Kalmbach pleaded guilty to promising a European ambassadorship to one J. Fife Symington, Jr., in return for a $100,000 contribution, and testified that he had reached a similar arrangement with another ambassadorial candidate.[40] As Kalmbach described it to the Senate, the Symington affair involved the clearest possible *quid pro quo*:

"He [Symington] said . . . I will contribute $100,000 to the President . . . [b]ut I want to make it plain that . . . before I make this pledge firm . . . I would like to be certain . . . that I will receive an appointment to a European post. . . . I [Kalmbach] . . . called Bob Haldeman. . . .

"The operator . . . put me through to Larry Higby [Haldeman's aide]. . . .

"[H]e [Higby] said the answer is go. You can go ahead on that." *Final Report*, *supra* note 38, at 497-98.

Congress learned of other, similar efforts to obtain government favor by offering large campaign contributions. Congress heard testimony that in 1972, one person offered a $100,000 contribution only because he thought it would cause the lifting of a HUD suspension on his construction business. The witness testified:

"A. . . . I asked: Do I have any reassurance here that I am going to get anything for my money? I mean I did not make the contribution for any other reason than—

"Q. You were not seeking to make a contribution to the election of the President?

"A. No, sir, I really was not interested in making that contribution."[41]

Appellant Mott himself was party to a particularly stark effort to persuade a candidate for President to

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[40] *Final Report*, *supra* note 38, at 497-98, 501-02; Findings I, ¶¶ 121-22, IIB J.A. 154.

[41] *Hearings Before the Senate Select Comm. on Presidential Campaign Activities*, 93d Cong., 1st Sess. 5336 (1973).

change his position on an important public issue by dangling in front of him the prospect of large campaign contributions. After Vice President Humphrey was nominated for President at the 1968 Democratic convention, Mott wrote to him as follows:

> "To my knowledge, none of us ["key McCarthy supporters"] has declared his support for you and your candidacy. Again, as far as I know, none of us has contributed towards your campaign. Although we each have the capability to contribute something more towards political campaigns in 1968, most of us are reserving our donations to give towards the campaigns of 'peace' candidates . . . .
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> • • • •
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> ". . . I came to the conclusion that the least we . . . could do for you would be to give you a hearing —a personal private interview of an hour's length —in order to question you about your own view of the nation's future and what it ought to be.
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> • • • •
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> ". . . We realize that you would like to have us become contributors towards your campaign, but you should not expect an immediate decision from any of us, checkbook-in-hand. If we become 'turned on' and enthusiastic towards your candidacy, we have the capacity to give $1,000,000 or more to your campaign—and raise twice or three times that amount. But we will each make our own individual judgments on the basis of how you answer our several questions and how you conduct your campaign in the coming weeks." [42]

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[42] Mott Deposition, Ex. 5, *confirmed, id.* Tr. at 13-14, 34. In 1971, when Senator Jackson was seeking the Democratic presidential nomination for 1972, M. T. Mehdi of The Action Committee on American-Arab Relations wrote to Jackson:

> "The Arab Americans and American Arabists, viewing you as a serious man . . . have decided to offer you the opportunity to wage your campaign for nomination as a freer man and with a greater possibility to succeed.
>
> "More specifically, we are offering you our financial support. Presently, there are pledges ranging from $800,000 to $1 million. . . . Furthermore, I am happy to advise you that we are ready to offer you at least twice as much financial support as the Jewish funds you are seeking and you can realistically expect."

Mehdi later said about the offer: "While it is true that this is not done in public, in reality this is done, so why should we be so hypocritical?" Making the offer, he said, was "as American as apple pie. . . . We are looking for one great, strong politician to stand on his feet and say, 'To hell with Israel.' " 4 National Journal 68 (1972).

That large contributions buy access to candidates and elected officials—and thus the opportunity to attempt to influence them—has been the common experience of elective politics. As Senator Charles Mathias testified without dispute in this action:

> "Candidates usually know and remember the names of individuals who make large contributions. An official may not change his or her vote solely to accommodate the views of such contributors, but often officials, including myself, will agree to meet with an individual who made a large contribution so the official can hear the contributor's concerns and make the contributor aware these concerns have been considered. . . . Since an elected official has only so much time available, the inevitable result of such special treatment for the large contributor is that other citizens are denied the opportunity they otherwise would have to confer with the elected official." [43]

The burden of the evidence is inescapable. What other inference adequately accounts for the common practice of

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[43] Affidavit of Charles McC. Mathias, Jr., Ex. I to Proposed Findings of Fact of Intervenor-Defendants Common Cause and John Gardner, ¶ 11(b); Findings I, ¶¶ 170-71, IIA J.A. 256-57. Appellant McCarthy, after reading this statement, generally agreed. McCarthy Deposition Tr. at 98-99.

many large donors of contributing to both candidates for the same office? In the 1972 and 1974 federal elections, registered interest groups made contributions on more than 450 occasions to two or more candidates for the same office, for a total of more than $1.3 million.[44]

For example, the political arm of the Teamsters Union in Alaska contributed to two Democratic candidates and one Republican candidate in the 1974 Alaska Senate race. Findings IIA, ¶ 109, IIB J.A. 470. During the 1972 election, Gulf Oil illegally contributed corporate funds to three presidential candidates—President Nixon, Senator Jackson, and Congressman Mills. Findings I, ¶ 156, IIA J.A. 253; *see id.*, ¶¶ 157, 165, IIA J.A. 253, 255. Similarly, the American Milk Producers, Inc., a large dairy cooperative, made large legal and illegal contributions to three 1972 presidential candidates—President Nixon, Senator Humphrey, and Congressman Mills. Findings I, ¶ 165, IIA J.A. 255.

The contributions of the American Medical Association (AMA) to California candidates in 1974 further illustrate that many donations are made for reasons other than ideology. The AMA gave a total of $151,165 to 29 of the 37 California House incumbents who faced major party opposition in 1974. They included 17 Republicans and 12 Democrats, ranging on the ideological spectrum from conservatives John Rousselot and Barry Goldwater, Jr. to liberals Ron Dellums and John Burton, Jr. Two challengers received AMA contributions, but in both cases the AMA gave larger contributions to the incumbents

[44] Findings IIA, ¶¶ 104, 111, IIB J.A. 467, 471-72; Affidavit of John J. Conway, Ex. E-IV to Proposed Findings of Fact of Defendants and Intervening Defendants Center for Public Financing of Elections, League of Women Voters of the United States, *et al.* (hereinafter "Proposed Findings of Defendants and Intervening Defendants"), ¶ 15.

against whom the challengers were running. In three open House races—races not involving an incumbent—both the Democratic and Republican nominees received AMA contributions; the AMA also gave significant contributions to both the Democratic and Republican nominees for the Senate. Findings IIA, ¶ 110, IIB J.A. 470.

Moreover, interest groups give heavily to legislators from both parties who are members of the congressional committees that regulate their industries. For example, during the 1974 campaign, political committees of maritime-related unions contributed $22,200 to Representative Frank Clark, Chairman of the House Merchant Marine Subcommittee, and $22,000 to Senator Russell Long, Chairman of the Senate Merchant Marine Subcommittee—who was unopposed in the general election and won his primary with 75 percent of the vote. Findings IIA, ¶ 108, IIB J.A. 469; *see id.*, ¶¶ 93-94, 105-07, 110-11; IIB J.A. 462-63, 467-69, 470-72.

Wealthy individuals with special business or personal interests follow similar practices. H. Ross Perot is the chairman of one of the largest suppliers of data processing to the Government for medicare and medicaid programs. The Ways and Means Committee has jurisdiction in the House over those programs. During the period from September 1, 1973 through December 31, 1974, Perot made personal contributions to 12 members of the House Ways and Means Committee, on both sides of the aisle, totaling $31,900. Two of the contributions were made after the election to members of the Committee who had been unopposed in the primary or general elections—Rep. Omar Burleson, who received $5,000, and Rep. Joe Waggoner, who received $5,000. In addition, Perot contributed $2,500 to Rep. James Jones and $500 to Rep. James Martin on December 30, 1974—almost two months

after the election and approximately two weeks after these two Congressmen had been named to serve on the Ways and Means Committee during the upcoming Congress. Perot also contributed $2,500 to Rep. Dan Flood, who served as Chairman of the House Appropriations Subcommittee for the Department of Health, Education, and Welfare, which administers medicare and medicaid programs.

In the Senate, the Finance Committee has jurisdiction over medicare and medicaid programs. Perot contributed $16,000 to Democratic and Republican members of the Senate Finance Committee, including $5,000 each to Senators Gravel, Packwood, and Talmadge, and $1,000 to Senator Russell Long, Chairman of the Finance Committee. In sum, Perot contributed $53,400 to 19 members of Congress associated with either the House Ways and Means Committee, the House Appropriations Subcommittee for HEW, or the Senate Finance Committee. Findings IIA, ¶¶ 93-95, IIB J.A. 462-64.

The reasons for such lavish giving are unmistakable. Indeed, Congressmen acknowledge them:

> "The link that so often exists between campaign contributions and preferential treatment by politicians was summed up by Edward Garmatz, former Maryland Congressman who had served as chairman of the Merchant Marine Committee. When questioned recently about the heavy political contributions he received from the maritime industry, he said 'Who in the hell did they expect me to get it from—the post office people, the bankers? You get it from the people you work with, who you helped in some way or another. It's only natural.' Congressman Chet Holifield expressed it another way, in speaking of lobbyists. He asserted (as quoted in the *Los Angeles Times*) that if they didn't help fill

> campaign purses 'the power of lobbyists would be practically nil.' "[45]

In this vein, Senator Biden earnestly complained:

> "All I know is that I have felt that pressure . . . , and I think that it is in the public interest to see to it that we who are running for public office can get about the business of telling the people what we think and not have to worry that if we take a position that is in opposition to any major interest group, whether it be labor or big business, that we are going to have campaign funds cut off that we need to get our case before the public."[46]

As the court of appeals noted, Senator Long was even more blunt:

> "[W]hen you are talking in terms of large campaign contributions . . . *the distinction between a campaign contribution and a bribe is almost a hair's line difference.* . . .
>
> "For example, I recall an election in my State where one man put up almost a quarter of a million dollars. He was a very fine, high type man and we passed a big tax that cost him a fortune. But we did not do that without first talking to him and saying, we think this is necessary [and] we hope you will pardon us for doing it. Frankly if he said, no, it just cannot be done, I do not know whether we would have done that or not.
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> ". . . One sweet woman was on the opposite side and thought they were going to lose and came charg-

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[45] *Hearings on S. 372 Before the Subcomm. on Privileges and Elections, supra* note 37, at 149. Findings IIA, ¶¶ 106-08, 110-11, IIB J.A. 468-69, 470-71; *see* Findings I, ¶¶ 101-03, IIA J.A. 54-146.

[46] 119 Cong. Rec. 25985 (1973).

ing in there with a couple of hundred thousand dollars to pump up their side . . . . *Anybody who would suggest that she had no more influence than any other sweet old lady in a calico dress just does not know anything about politics.*" [47]

Pressures bear also on potential contributors. The cost of the escalating campaign "arms race," detailed below, forces candidates to seek ever greater amounts of financial support. Dependent on ever-increasing supplies of money, candidates must solicit contributions in ways and under circumstances that compromise both donors and donees. Both courts below found, as Congress did, that "big-spending campaigns pull like a magnetic field"—"a magnet for large contributions, and for circumventions." Ct. App. Op. 1516, 1541.

The testimony of corporate executives before Congress confirms that many donors feel they must respond or risk suffering unfavorable treatment at the hands of their Government. "Extortion, or practices that differ only in being more genteel, are the Janus face of undue influence by contributors." [48] George Spater, former Chairman of American Airlines, told Congress that:

> "I believe that the present system places unfair pressures both on the candidates and on corporate

[47] *Hearings on S. 3496, Amendment No. 732, S. 2006, S. 2965,* and *S. 3014 Before the Senate Comm. on Finance,* 89th Cong., 2d Sess. 78 (1966) (emphasis added), *quoted in part in* Ct. App. Op. 1514 n. 29. During the Senate debate, Senator Humphrey similarly stated:

> "Those of us who run for office can profess that the campaign contributions we receive do not in any way control our votes, but I venture to say that not many believe it." 120 Cong. Rec. S4553 (daily ed. March 27, 1974), *quoted in* Ct. App. Op. 1513 n.28.

[48] D. Adamany & G. Agree, Political Money: A Strategy for Campaign Financing in America 11 (1975).

> executives. . . . [M]ost contributions from the business community are not volunteered to seek competitive advantage but are made in response to pressure for fear of a competitive disadvantage that might result if they are not made, and the process, in my opinion, clearly degrades both the donor and the donee.
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> • • • •
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> "There were two aspects: Would you get something if you gave it, or would you be prevented from getting something if you didn't give it?
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> • • • •
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> "[I]t is something like the old medieval maps that show a flat world and then what they called 'terra incognita' with fierce animals going around the fringes of this map, you just don't know what is going to happen to you if you get off it. I think that sometimes fear of the unknown may be more terrifying than fear of the known. I think this is a very large element in the picture." [49]

Congress heard a similar explanation for Ashland Oil's illegal corporate contributions:

> "I think all we were attempting to do was to assure ourselves of a forum to be heard. . . . [W]e felt we needed something that would be sort of a calling card, something that would get us in the door and make our point of view heard.
>
> "We didn't expect those points of view to be accepted, but only from the point of view of being able to express them and that was our thinking or ra-

[49] *Hearings Before the Senate Select Comm. on Presidential Campaign Activities, supra* note 41, at 5495, 5514. *See also* Findings I, ¶ 105, IIA J.A. 147.

tionale as to why we were interested in making any type of contribution." [50]

The disclosures about the 1972 elections are painful reminders of the extent of these problems. One high campaign official, a former Cabinet member, pleaded guilty to receiving large illegal contributions from major corporations. Findings I, ¶ 112a, IIA J.A. 148. A former high official in the Humphrey campaign was recently convicted of willfully receiving such contributions. Twenty-two individuals pleaded guilty to making, conspiring to make, or aiding and abetting illegal corporate contributions to both major parties (Findings I, ¶¶ 113-14, 117h-k, IIA J.A. 148-50, 152-53); 17 corporations pleaded guilty to the same offense or conspiring to commit that offense (*id.*, ¶¶ 115, 117a-b, IIA J.A. 150-51. In addition, two corporations and one individual pleaded guilty to violating the prohibition against contributions by government contractors. Findings I, ¶¶ 116, 117f, IIA J.A. 151. Three individuals associated with large companies have pleaded guilty to concealing the identity of large individual contributors. Findings I, ¶ 117, IIA J.A. 151-53.

These abuses and questionable practices were not restricted to the 1972 election, nor—as the record plainly shows—to any one party. Recent studies have chronicled similar practices dating from the Pierce and Buchanan administrations down through the 1960's.[51] For example, in the 1896 presidential campaign, before corporate contributions were outlawed, one campaign manager simply "assessed" major corporations at the rate of one-fourth

[50] *Hearings Before the Senate Select Comm. on Presidential Campaign Activities, supra* note 41, at 5442.

[51] *See* C. V. Woodward, Responses of the Presidents to Charges of Misconduct (1974).

of one percent of their capital; they gladly contributed the assessed amounts.[52] In 1946, Truman's nomination of a former campaign treasurer for a high post faltered when the nominee was accused of trying to influence governmental decisions in favor of oil companies who were large contributors. Truman's military aide also was accused of collecting political gifts in exchange for government favors.[53] Major American corporations such as Goodyear Tire and Rubber, Ashland Oil, Gulf Oil, Minnesota Mining and Manufacturing, and Phillips Petroleum have been responding to solicitations from and making corporate contributions to both parties, at all levels of politics, for many years.[54]

Indeed, the legislative history of the Federal Corrupt Practices Act of 1925 reads as if it had been written in the past year. During debate on that law, Senator Robinson said:

[52] J. Sundquist, Dynamics of the Party System 142 (1973).

[53] C. V. Woodward, *supra* note 51, at 276, 280.

[54] Findings I, ¶¶ 119, 120, IIA J.A. 153-54; Exs. F-XXXIV and F-XXXV to Proposed Findings of Defendants and Intervening Defendants.

A report filed with the Securities and Exchange Commission by Ashland Oil lists illegal corporate contributions over a five-year period. They include very large gifts to the Democratic presidential campaign in 1968 and the Republican presidential campaigns in 1968 and 1972 and gifts of $5,000 each channeled through Carl Arnold to 10 Senate candidates, 7 Democrats and 3 Republicans. Arnold also channeled $50,000 to Wilbur Mills for use in Democratic congressional campaigns. Report of the Special Committee to the Board of Directors of Ashland Oil, Inc. (filed Aug. 9, 1975).

Appellants argue that the new law would do nothing additional to curb already illegal corporate contributions. Appellants' Br. 29, 64. However, as the Ashland report illustrates, such contributions have commonly been disguised as large individual gifts. *See also* Findings IIA, ¶ 119, IIB J.A. 508-64. The $1,000 limit on individual gifts will severely restrict this method of circumventing the ban on corporate contributions.

"We all know . . . that one of the great political evils of the time is the apparent hold on political parties which business interests and certain organizations seek and sometimes obtain by reason of liberal campaign contributions. Many believe that when an individual or association of individuals makes large contributions for the purpose of aiding candidates of political parties in winning the elections, they expect, and sometimes demand, and occasionally, at least, receive, consideration by the beneficiaries of their contributions which not infrequently is harmful to the general public interest. It is unquestionably an evil which ought to be dealt with, and dealt with intelligently and effectively." 65 Cong. Rec. 9507-08.

In 1940, Senator Bankhead sounded a similar theme:

"We all know that money is the chief source of corruption. We all know that large contributions to political campaigns . . . put the political party under obligation to the large contributors, who demand pay in the way of legislation. . . ." 86 Cong. Rec. 2720.

In 1962, President Kennedy's Commission on Campaign Costs issued a report which found that:

"We agree with President Kennedy, former President Eisenhower, and other leaders of both parties that the existing system of presidential campaign finance poses serious problems. It is not desirable to have candidates for high office, especially for President and Vice President, dependent on individuals or organizations with special interests who are willing to make large contributions in the form of cash or campaign services. As President Kennedy has stated, 'it is not healthy for the democratic process —or for the ethical standards in our government—

to keep our national candidates in [the present] condition of dependence.'

• • • •

"Under present practices, the parties encounter enormous difficulty in raising adequate funds at the proper time. Given the erratic flow of funds and the periodic crises in campaign finance, individuals and organizations providing substantial gifts at critical moments can threaten to place a candidate in moral hock. In consequence, a disturbing and fundamental failure of present practices is the widespread cynicism about the democratic system they produce." [55]

Finally, Congress was spurred by another strong consideration—it found "a definite need for effective and comprehensive legislation in this [campaign finance] area to restore and strengthen public confidence in the integrity of the political process"—confidence that had declined, in significant part, because of campaign financing abuses.[56] A survey done for the Senate Subcommittee on Intergovernmental Relations concluded:

"Public confidence in most government institutions . . . has declined drastically over the past six years.

• • • •

". . . [W]hen asked to explain their concern, one quarter of those sampled—the largest segment—volunteered the belief that 'government leaders are corrupt and immoral.'

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[55] Financing Presidential Campaigns, Report of the President's Commission on Campaign Costs 2-3, 11 (1962).

[56] H.R. Rep. No. 1239, 93d Cong., 2d Sess. 4 (1974); S. Rep. No. 689, *supra* note 35, at 4. *See* Affidavit of Arthur H. Miller, Ex. M-I to Proposed Findings of Defendants and Intervening Defendants, ¶¶ 5, 7.

> "Leaders, when asked . . . to list the 'main reasons' for the loss of confidence in public officials, overwhelmingly volunteered 'corruption, use of office and public funds for personal gain' (49% of the mentions) and 'Watergate' (28%)." [57]

A public opinion poll prepared for the Republican National Committee and released in January 1975 showed that those who believe that government is conducted for the "benefit of all the people" had declined from 64 percent in 1964 to a low of *21.3 percent* in 1974, while the percentage of people polled who believe that government is "pretty much run by a few big interests looking out for themselves" increased from 29 percent in 1964 to a high of *69.9 percent* in 1974. Findings I, ¶ 155; IIA J.A. 252-53; *see id.* ¶¶ 149-59, 171, IIA J.A. 206-53. The percentage of people who think that "hardly any" of the "people running the government are a little crooked" declined from 18.2 percent in 1964 to 9.8 percent in 1974, while the percentage who think that "quite a lot" are "crooked" increased from 28 percent in 1964 to 49.3 percent in 1974—nearly a majority of the electorate. Findings I, ¶ 155, IIA J.A. 252-53.

Louis Harris, the expert public opinion analyst, testified that "Public confidence in government generally must be reported as being lower than a constituent democracy can afford." [58] Congress found that lack of respect un-

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[57] *Confidence and Concern: Citizens View American Government, A Survey of Public Attitudes*, 93d Cong., 1st Sess. 24, 29, 46-47 (1973), Ex. M-II to Proposed Findings of Defendants and Intervening Defendants.

[58] *Hearings on a Survey of Public Attitudes Before the Subcomm. on Intergovernmental Relations of the Senate Comm. on Government Operations*, 93d Cong., 1st Sess. 6-8 (1973). *See also* Affidavit of James MacGregor Burns, Ex. H-I to Proposed Findings of Defendants and Intervening Defendants, ¶¶ 6, 8.

dermines the legitimacy of the Government in the public mind and weakens its effectiveness and the vitality of the democratic principles on which it is based.[59]

As President Ford said when he signed the FECA Amendments, "The unpleasant truth is that big money influence has come to play an unseeming role in our electoral process. This bill will help to right that wrong." [60]

B. Congress Found that the Ability of the Wealthy Few To Make Large Campaign Contributions Has Fostered Inequality Among Citizens in the Ability To Affect Electoral Choices

With no effective limits on campaign gifts, a tiny fraction of the population has furnished a grossly disproportionate share of the money used in campaigns. The power to affect electoral choices is thereby concentrated disproportionately in the wealthy few—not because of the power of their ideas but because of the power of their purses.[61] A mere one percent of the people contribute 90 percent of the money candidates receive for their campaigns. Findings I, ¶ 100, IIA J.A. 54. Donations from only 2-3 percent of the wealthiest people in the country provide about 95 percent of the financing for congressional elections.[62] In 1972, the 1254 largest contributors accounted for over $51 million of campaign

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[59] S. Rep. No. 170, 93d Cong., 1st Sess. 2 (1973). *See also* Affidavit of James MacGregor Burns, *supra* note 58, ¶¶ 7, 9-18; Affidavit of Arthur H. Miller, *supra* note 56, ¶¶ 6, 9; D. Adamany & G. Agree, *supra* note 48, at 14-15.

[60] 10 Presidential Documents 1285 (Oct. 21, 1974).

[61] *Hearings on S. 372 Before the Subcomm. on Privileges and Elections, supra* note 37, at 18, 213.

[62] 120 Cong. Rec. H7919 (daily ed. Aug. 8, 1974) (remarks of Rep. Udall).

funds. And in the 1972 presidential race alone, 153 large contributors accounted for almost $20 million of the incumbent's campaign funds—that is, one-third of his financial support was furnished by less than *one two-thousandth of one percent* of the people who voted for him and less than *one ten-thousandth of one percent* of the population.[63] By contrast, in 1975 alone, more than 32 million individuals have chosen to help finance the 1976 presidential campaigns by contributing $1 through the tax checkoff.[64]

These statistics lend substance to the popular conception that electoral politics has been a "rich man's game" and that the ordinary citizen can have little effect on elections that are dominated by wealthy contributors. That popular understanding discourages persons of modest means from participating, either through their small contributions or by more direct means. Senator Mathias testified that many persons have told him they "feel the average American has no significant role in the political process, and . . . they therefore do not participate." Mathias Affidavit, *supra* note 43, ¶ 11(b); Findings I, ¶¶ 170-71, IIA J.A. 174-75. Limits on campaign giving and spending are designed to reverse that tendency. Like earlier campaign reform statutes, their goal is

> "not merely to prevent the subversion of the integrity of the electoral process. [Their] underlying philosophy [is] to sustain the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government." *United States* v. *UAW*, 352 U.S. 567, 575 (1957).

[63] Citizens' Research Foundation, Political Contributors and Lenders of $10,000 or More in 1972 (1975); H. Alexander, Financing the 1972 Election 12, 641 (forthcoming D.C. Heath & Co. 1976) (page citations are to the typescript, with the author's permission).

[64] Federal Election Commission, Press Release (Oct. 15, 1975).

C. Congress Found that the High—and Rising—Cost of Campaigning Has Tended To Close Politics to Candidates and Parties Who Lack Access to Large Sources of Wealth

Congress found that federal election campaigns have become enormously expensive and that the costs of conducting such campaigns are increasing at an "alarming" rate.[65] An estimated $400 million was spent in 1972 for nomination and election campaigns—a 33 percent increase over 1968 and almost a 300 percent increase since 1952.[66] Over the same periods, the consumer price index rose only 20.3 percent from 1968 to 1972 and only 57.6 percent from 1952 to 1972.[67]

In 1972, presidential campaign spending alone totaled $94.4 million—up 85 percent from $56.4 million in 1968; up 147 percent from $38.1 million in 1964; and up 210 percent from $27.2 million in 1960. Findings IIA, ¶ 51, IIB J.A. 451; Findings I, ¶ 89, IIA J.A. 49-51. During the same 12-year period, the consumer price index rose only 41.3 percent. Findings I, ¶ 11, IIA J.A. 9. In House

[65] H.R. Rep. No. 1239, *supra* note 56, at 3; S. Rep. No. 170, *supra* note 59, at 1-2; S. Rep. No. 689, *supra* note 35, at 5; Findings I, ¶¶ 88, 89, 93-95, IIA J.A. 49-51, 53.

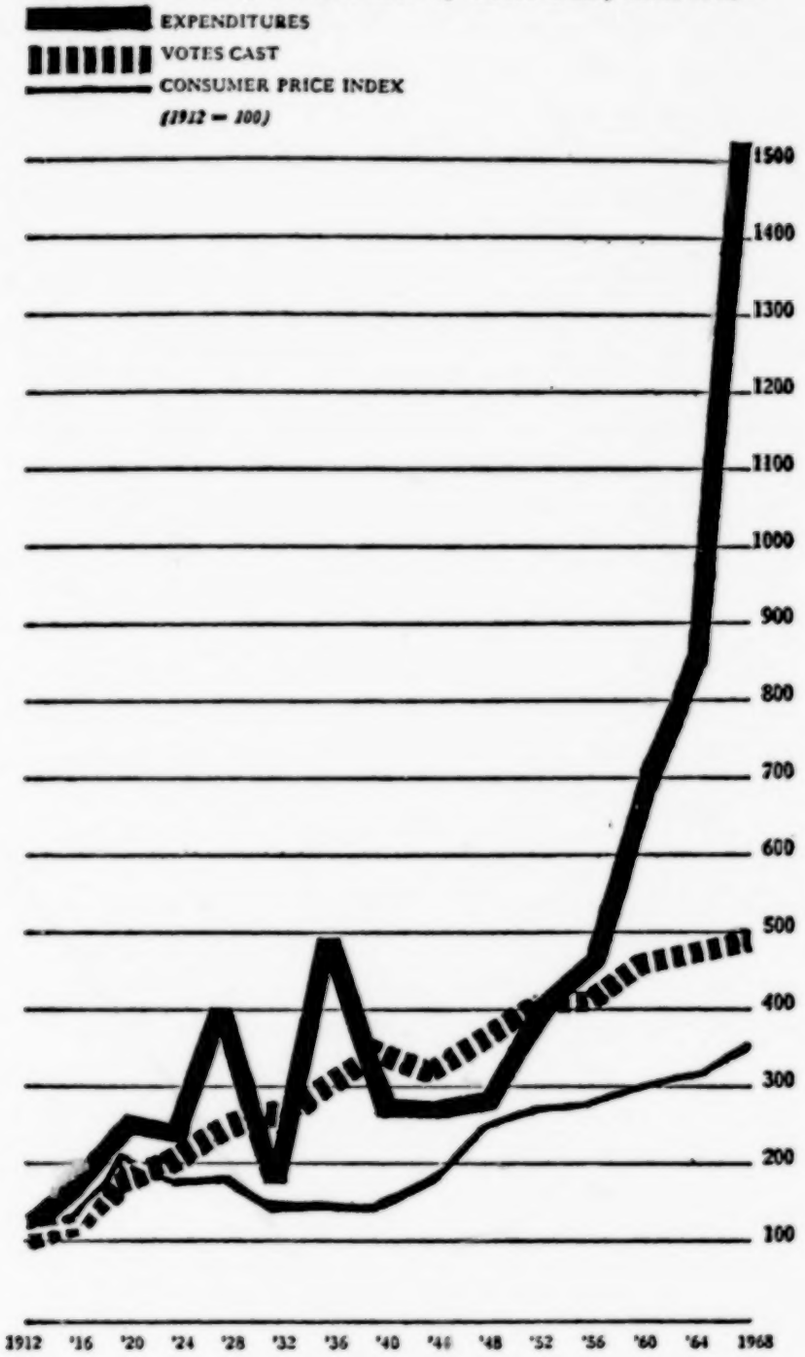
[66] *Hearings on S. 372 Before the Subcomm. on Communications of the Senate Comm. on Commerce*, 93d Cong., 1st Sess. 219 (1973); Findings I, ¶ 93, IIA J.A. 53.

[67] U.S. Dep't of Labor, Bureau of Labor Statistics, Consumer Price Index for Wage Earners and Clerical Workers, U.S. City Average All Items, Series A. Appellants suggest that rising campaign costs are properly compared to the increase in the gross national product. Appellants' Br. 57. The comparison is misleading. The GNP is not a measure of inflation, but rather a measure of the total value of goods and services produced, which reflects changes in the productivity and size of the work force. In contrast, the CPI measures the increases in the prices of a "standard market basket" of goods and services—and is the standard used by the Department of Labor and the Bureau of Labor Statistics to measure inflation.

and Senate races, campaign spending increased 48 percent between 1968 and 1970; 35 percent between 1966 and 1968; 36 percent between 1964 and 1966; and 10 percent between 1962 and 1964.[68] The following graph shows this accelerating trend:

[68] H.R. Rep. No. 1239, *supra* note 56, at 3. *See* Findings IIA, ¶¶ 5-11, IIA J.A. 326-94, IIB J.A. 395-441, which reflect the most expensive House and Senate races in 1972 and the most expensive House races in 1974. *See also id.*, ¶¶ 3-6, IIA J.A. 269-394.

Indexes of Direct Campaign Expenditures by National Level Committees, Consumer Prices, and Number of Votes Cast, 1912-1968 [69]



[69] *Hearings on S.372 Before the Subcomm. on Communications*, *supra* note 66, at 276.

Candidates feel they must try to match spending increases by their opponents or suffer a competitive disadvantage. Each side escalates in an "arms race" that neither can control. A good example of the tendency of a campaign to raise and spend as much as possible—even more than is necessary to win—is presented by President Nixon's 1972 reelection effort. Maurice Stans, Chairman of the Finance Committee to Re-Elect the President, testified before the Senate that in his opinion the 1972 Nixon campaign spent more than was necessary:

> "I thought . . . originally that in the President's position he could be reelected for 25 or 30 million dollars and when they came to me with budgets of 40 million dollars which were incomplete, and higher amounts, I objected very strenuously. I insisted that there was overkill in the budget in the sense that they were spending money for massive amounts of direct mail, massive amounts of telephoning, massive amounts of advertising that just were duplicating each other." [70]

Congress found that as a result of rising campaign expenditures, much of the electorate has come to believe that candidates can "buy" an election by simply outspending their opponents in a campaign, and that candidates with wealthy or special interest supporters therefore have a decided advantage in federal elections.[71] Obviously, where such an impression exists, public confidence in elected representatives deteriorates. *See* Findings I, ¶¶ 149-55, IIA J.A. 206-53.

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[70] *Hearings Before the Senate Select Comm. on Presidential Campaign Activities*, *supra* note 41, at 715.

[71] H.R. Rep. No. 1239, *supra* note 56, at 3.

Candidates must raise larger and larger sums of money in order to match the ever more expensive campaigns of their opponents. Findings I, ¶ 97, IIA J.A. 54. Congress found that in order to raise these sums, candidates from all parties have increasingly relied on large contributions from monied and special interests."[72] Potential candidates who lack access to large sources of wealth—or who are unwilling to incur obligations to large contributors—face an extreme competitive disadvantage. The testimony of a former presidential campaign finance chairman illustrates this phenomenon:

> "[W]e know there was fund raising being done at the local level by the state committees, through the store-front offices and women's clubs and all that sort of thing.
>
> "Now, from my 1968 experience, we knew that there was absolutely no possibility of raising $40 million by that kind of effort because the average contribution that came through those programs was less than $25, we had to find ways of tapping larger sources and this meant to people who had means to contribute more.
>
> • • • •
>
> ". . . [W]here we had to look for the major source of money was to the people of wealth, the people of means, who were willing and able to contribute more of what they had in proportion to their wealth.
>
> "It was by that means that we were able to reach something like 75 people who gave $100,000 or more." [73]

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[72] H.R. Rep. No. 1239, *supra* note 56, at 3; 120 Cong. Rec. H7922 (daily ed. Aug. 8, 1974) (remarks of Rep. Anderson); Findings I, ¶ 69, IIA J.A. 32.

[73] *United States* v. *Mitchell and Stans*, 73 Cr. 439, Tr. at 8202-04 (S.D.N.Y. April 17 and 18, 1974) (testimony of Maurice H. Stans); Findings I, ¶ 98, IIA J.A. 54; *see* Findings IIA, ¶ 119, IIB J.A. 508-64.

This rising thirst for money has forced candidates to divert time and energy to fund-raising activities and away from other activities, such as addressing the substantive issues, that do not fill campaign coffers.[74] Joseph Cole, who was National Finance Chairman of the Democratic National Committee, vividly recounted the effects of the pressure to raise money on candidates in a passage quoted by the court of appeals:

> ". . . I have been close to four or five Presidential campaigns . . . . I have sat next to the Presidential candidate, who was tired, who was weary and concerned with the issues and not able to handle them, not able to prepare, not able to think about them because he has to go downstairs at 7 in the morning to shake hands with a guy from whom he may get a large contribution.
>
> "It goes on all day long and all night long, and I was asked at the Senate hearings how much time do you think a Presidential candidate spends on fund-raising? And I said at least 70 percent of his time, and I think all of his waking hours. It is really demeaning, demeaning to go through it." [75]

Senator Humphrey, a veteran of four national campaigns, agrees:

> "Campaign financing is a curse. It's the most disgusting, demeaning, disenchanting, debilitating experience of a politician's life. It's stinky, it's lousy. I just can't tell you how much I hate it. I've had to

[74] *See Hearings on S. 372 Before the Subcomm. on Privileges and Elections, supra* note 37, at 78 (testimony of Sen. Hollings); *Hearings on S. 1103, supra* note 36, at 207 (testimony of Sen. Clark); Findings I, ¶ 170, IIA J.A. 256.

[75] *Hearings on H.R. 7612 and S. 372 Before the Subcomm. on Elections of the House Comm. on House Administration*, 93d Cong., 1st Sess. 138 (1973), *quoted in* Ct. App. Op. 1513 n.27.

> break off in the middle of trying to make a decent, honorable campaign and go up to somebody's parlor or to a room and say, 'Gentlemen, and ladies, I'm desperate. You've got to help me. My campaign chairman is here and I'm going to step out of the room.' You even have to go through all that kind of fakery. You ask'em and you just have to feel like a louse. When you are desperate, these are the things you just have to do." [76]

The high price of campaigning thus has become a barrier to the candidacies of persons who lack great wealth or access to it.[77] Congress concluded that the range of potential candidates for federal office was steadily being reduced to the friends of the wealthy and the very wealthy themselves. Candidates who could pump tremendous personal and family fortunes into their campaigns have become increasingly predominant in federal elections. Vice President Rockefeller's stepmother alone contributed almost $1.5 million to his 1968 Republican presidential nomination effort.[78] "In the Nation's seven largest States in 1970, 11 of the 15 major senatorial candidates were millionaires. The four who were not millionaires lost their bid for election." 117 Cong. Rec. H42065 (daily ed., Nov. 18, 1971) (remarks of Rep. MacDonald of Massachusetts); *see* A. Reitman & R. Davidson, The Election Process: Voting Laws & Procedures 89 (1972); 1970 *Cong. Q.* 2059-63 (Aug. 14, 1970).

As Senator Biden said on the Senate floor, remedies were needed that would

[76] *Quoted in* The New York Times, Oct. 13, 1974, § 4, at 18, col. 1.

[77] D. Dunn, *supra* note 34, at 11-14; Ct. App. Op. 1539.

[78] D. Dunn, *supra* note 34, at 13.

"allow candidates—incumbents and challengers alike —to compete more on the basis of merit than on the size of the pocketbook—free from potentially corroding dependence on personal or family fortune or the gifts of special interest backers—be they those of business, organized labor or conservative or liberal interests." 119 Cong. Rec. S14724 (daily ed. July 25, 1973).

IV. THE FIRST AMENDMENT PERMITS CONGRESS TO IMPOSE SOME REASONABLE LIMITS ON CAMPAIGN CONTRIBUTIONS AND EXPENDITURES

Appellants argue that the First Amendment forbids Congress to impose *any* limits on campaign giving and spending. They further argue that, even assuming the power to set some limits, the particular limits Congress chose are unreasonable and discriminatory. We deal here with appellants' broad denial of congressional power in this area. In Part V, we answer their attack on the specific limits Congress set.

Contribution and expenditure limits are aimed at the adverse effects of unlimited money, not at any effect of unlimited speech. Of course, to restrict what candidates and their supporters may spend to win elections can have incidental effects on political speech and association. However, that conclusion does not end the analysis, but only begins it.

In *United States* v. *O'Brien*, 391 U.S. 367 (1968), this Court summarized the test for determining the permissibility of laws—such as these—that do not have the purpose of limiting speech but that incidentally impinge on First Amendment interests:

> "To characterize the quality of the governmental interest which must appear, the Court has employed a variety of descriptive terms: compelling; substantial; subordinating; paramount; cogent; strong. Whatever imprecision inheres in these terms, we think it clear that a government regulation is sufficiently justified if it is within the constitutional power of Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." *Id.* at 376-77 (footnotes omitted).

See also Broadrick v. *Oklahoma*, 413 U.S. 601, 611-12 (1973). Each element of the test is clearly met in this case.

We have shown that regulation of federal elections is clearly "within the constitutional power of Government." Part II, *supra*.

The interests served by campaign giving and spending limits, described in Part III, are the most compelling interests in a representative democracy. Foremost is the interest in curbing the corrupting influence of large contributions on candidates and elected officials and eliminating the appearance of such influence. Ancillary to that are the related needs to reduce the disproportionate power of the wealthy to affect electoral choices, and to reduce financial barriers to candidacy.

These public interests plainly are "unrelated to the suppression of free expression." Appellants assert that the evils attacked by giving and spending limits grow out of "too much communication" and that the limits achieve their goals by restricting communication. Appellants' Br. 79-86, 116-27; *see* United States' *Amicus* Br. 26-27. That view is based on a fundamental misconception of the

ways in which money has harmed the electoral process and the ways in which the limits will remedy those harms. We will show that the harms result directly from unlimited money, not from unlimited speech, and that the limits will achieve their goals wholly apart from any effect on communication.

Finally, we will show that giving and spending limits are not unnecessarily restrictive means of achieving the legislative goals.

A. Giving and Spending Limits Serve Compelling First Amendment and Other Interests in Protecting the Integrity of the Electoral Process

The compelling need to remedy campaign financing abuses derives not only from Articles I and II but also from the First Amendment. That amendment protects a cluster of related and sometimes competing values. Accommodation among those competing values is essential to preserve the matrix of our democratic system. *See* A. Bickel, The Morality of Consent (1975); T. Emerson, *supra* note 31, at 3-20, 627-30. We believe that giving and spending limits clearly promote, rather than infringe, the values embodied in the First Amendment.

This Court's decisions affirm that the First Amendment is not a simple absolute. "Neither the right to associate nor the right to participate in political activities is absolute . . . ." *Civil Service Commission* v. *Letter Carriers*, 413 U.S. 548, 567 (1973). Even where First Amendment interests are pitted against *unrelated* governmental interests, this Court has made clear that accommodation of the competing interests is necessary. If the countervailing governmental interest is compelling, laws that incidentally impinge on free expression may be upheld. *E.g.*, *United States* v. *O'Brien*, 391 U.S. 367, 376-77 (1968); *Broadrick* v. *Oklahoma*, 413 U.S. 601, 611-12 (1973).

The need for accommodation is much more obvious where, as here, First Amendment values lie on both sides of the case. There may be a First Amendment interest in allowing a reasonable amount of campaign giving and spending, but there is an equally compelling First Amendment interest in preventing the excessive use of money from distorting and defeating the democratic process. In Professor Freund's words,

> "We are dealing here on the one hand with the right to speak fully and freely and on the other with the right of equality, the right of access to the media, the right of the electorate not to have their representative or their president unduly beholden to a particular interest because of campaign obligations. . . ." [79]

The issue posed by legislation "designed to purify the democratic process" is, according to Professor Emerson,

> "not the reconciliation of freedom of expression with another kind of interest but the reconciliation of opposing interests within the system of free expression itself." T. Emerson, Toward a General Theory of the First Amendment 103-04 (1966).[80]

Emerson concludes that the First Amendment permits Congress to impose "certain restraints on expenditure of money in political campaigns or in direct contacts with the legislature." *Id.* at 104-05.

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[79] Freund, *supra* note 31, at 72-73. *See also* Note, *Campaign Spending Controls Under the Federal Election Campaign Act of 1971*, 8 Colum. J.L. & S.P. 285, 302 (1972); Comment, *Free Speech Implications of Campaign Expenditure Ceilings*, 7 Harv. Civ. Rights-Civ. Lib. L. Rev. 214, 223-24 (1972).

[80] *See* T. Emerson, *supra* note 31, at 629; Redish, *Campaign Spending Laws and the First Amendment*, 46 N.Y.U.L. Rev. 900, 907 (1971).

A primary purpose for the First Amendment's protection of free expression is to make democracy practicable. The goal is "producing an informed public capable of conducting its own affairs." *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 392 (1969). As Alexander Bickel has said:

> "The social interest that the First Amendment vindicates is . . . the interest in the successful operation of the political process, so that the country may better be able to adopt the course of action that conforms to the wishes of the greatest number, whether or not it is wise or is founded in truth." A. Bickel, *supra* p. 76, at 62.

Self-expression as an aid to self-government is "the central meaning" of the First Amendment [81] and a keystone of our democratic system.

Many federal laws—such as the laws forbidding vote-buying, 18 U.S.C. § 597, and intimidation of voters, 18 U.S.C. § 594—are designed to prevent subversion of the democratic process. State laws constitutionally forbid electioneering at or adjacent to the polls. All such laws restrict behavior that might be called speech, assembly, or petition and considered protected by the First Amendment; but they do so to achieve the First Amendment goal of choosing our elected representatives through a free and informed suffrage.

Without such laws, we might have utter political license but we would not have a working representative democ-

[81] *See, e.g.*, Kalven, *The New York Times Case: A Note on "The Central Meaning of the First Amendment,"* 1964 Sup. Ct. Rev. 191; Meiklejohn, *The First Amendment is an Absolute*, 1961 Sup. Ct. Rev. 245.

racy. Laws such as these—including the challenged statutes—bring the reality of the electoral process closer to its ideal. They do not hinder, they promote the fundamental goals of the First Amendment.

Such laws also promote other constitutional values. Articles I and II establish the legislative and executive branches of the Government and provide for the methods of selection of Senators, Congressmen, and the President and Vice President. The provisions prescribing the manner of choosing these federal officers have been modified and supplemented by the Twelfth, Fourteenth, Seventeenth, Twentieth, Twenty-Third, and Twenty-Fifth Amendments. The Fifteenth, Nineteenth, Twenty-Fourth, and Twenty-Sixth Amendments have successively expanded the franchise. Each of these constitutional provisions presupposes that Congress can and will enact the laws necessary to assure that the elections in which legislative and executive officers are chosen will be fair and open.

The challenged laws are such laws. They will help to make elections in practice what they are in constitutional text and theory: a means by which the voters can choose their leaders and the directions their Government will take, with each voter having an equal say in the choices.

1. *Giving and Spending Limits Will Protect Candidates and Elected Officials Against Improper Influence*

The cardinal objective of giving and spending limits is to reduce the temptation for candidates to seek the favor of large contributors, and thus to do away with the improper influence of large campaign donors on those who win elections. Our elected representatives will be better able to respond to the views and petitions of all their

constituents if they are less dependent on monied special interests to win or retain their seats.[82]

Without giving and spending limits, few politicians can afford to end their courtship of large contributors. The limits in the new laws give candidates this freedom. The candidates are now freed to turn much of their own time from "courting . . . one individual for days or months in the hope of getting $15,000 or $20,000" to the substance of the campaign, while their staffs canvass more broadly for small contributions.[83] Candidates are also freed to frame their campaign positions—and their policies once they are elected—to suit the views of all constituents, not merely a few large givers.

Moreover, even if politicians were able to resist the temptation to favor their large financial backers, this Court has recognized the public interest in preventing the appearance of such favor—in "protect[ing] the [electoral] process from being misjudged in the minds of the public."[84] The Court has said:

> "[I]t is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative Government is not to be eroded to a disastrous extent." [85]

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[82] H.R. Rep. No. 1239, *supra* note 56, at 13; Findings I, ¶¶ 108, 110, 176, IIA J.A. 147-48, 258.

[83] Witcover, "New Campaign Fund Law Already Making Critical Impact," The Washington Post, March 15, 1975, at A3, col. 3.

[84] *Cox* v. *Louisiana*, 379 U.S. 559, 565 (1965).

[85] *Civil Service Comm'n* v. *Letter Carriers*, 413 U.S. 548, 565 (1973).

2. *Giving and Spending Limits Will Help To Equalize the Ability of All Citizens To Participate Effectively in Elections*

Giving and spending limits will also help to equalize the ability of all citizens to participate in elections and affect the choices available in them. Our constitutional system is based on the precept that citizens of unequal wealth are entitled to an equal say in electing national leaders and in urging their views on those elected after they take office. "Wealth . . . is not germane to one's ability to participate intelligently in the electoral process." *Harper* v. *Virginia Board of Elections*, 383 U.S. 663, 668 (1966). Of course, individuals are unequal in traits other than wealth—they are not equally endowed with intelligence, persuasiveness, lung-power, or free time. But, unlike wealth, there are natural limits on these other advantages:

> "Men may not be equal in lung-power, but even Senate filibusters reveal that the capacity of any man to speak is finite. However, the things that unlimited sums of money can buy—recordings, sound trucks, the speeches of others, radio and television programs—are subject to no comparable human limit." [86]

The political inequality produced by great disparities in wealth, if left unregulated, would upset the premises on which our democracy is based.[87] There is a marked

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[86] A. Rosenthal, *supra* note 31, at 21.

[87] R. Dahl, After the Revolution? Authority in a Good Society 106-07, 110-15 (1970); A. Okun, Equality and Efficiency: The Big Tradeoff 22-25 (1975); D. Adamany & G. Agree, *supra* note 48, at 2-4, 8 (1975).

Appellants assert that, since not all rich people think alike, rich people can be relied on to be the "representatives" of the unwealthy

correlation between the decline in citizen participation in the political process and the increase in citizen belief that government is controlled by monied and special interests.[88] Democratic government is endangered if the many stop participating because they believe the wealthy few determine what the choices will be.

In limiting the size of contributions, Congress took a historic step toward disestablishing wealth as a basis for political power and preference. It has not removed the disparities of wealth, but it has broken the link of mutual attraction between great wealth and candidates for elected office that gives the possessors of such wealth a disproportionate impact on the course of public affairs.

That such congressional action is permissible is shown by this Court's decisions abolishing other voting inequalities. Direct restrictions on the right to vote based on wealth—such as poll taxes[89] or property qualifications[90]—are un-

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and to promote their interests. Appellants' Br. 61-62, 121-22. John Stuart Mill answered that assertion in 1861:

> "[I]n order to support the claim of all to participate in the sovereign power[,] [w]e need not suppose that when power resides in an exclusive class, that class will knowingly and deliberately sacrifice the other classes to themselves: it suffices that, in the absence of its natural defenders, the interest of the excluded is always in danger of being overlooked; and, when looked at, is seen with very different eyes from those of the persons whom it directly concerns."

Considerations on Representative Government, in The Philosophy of John Stuart Mill 409-10 (M. Cohen ed. 1961). Our nation was founded on the principle that even the unwealthy are entitled to elect those who will be their representatives.

[88] *See* Findings I, ¶¶ 150-52, 154-55, IIA J.A. 206-14, 217-53; Affidavit of James MacGregor Burns, *supra* note 58, ¶¶ 6-9.

[89] *See* Twenty-Fourth Amendment (abolishing poll tax in federal elections); *Harper* v. *Virginia Bd. of Elections*, 383 U.S. 663 (1966) (poll tax held unconstitutional in state elections).

[90] *Cipriano* v. *Houma*, 395 U.S. 701 (1969); *Phoenix* v. *Kolodziejski*, 399 U.S. 204 (1970). "Any unjustified discrimination in

constitutional. Even where the right to vote is not actually denied, laws that create inequalities in voting power have been held unconstitutional. The reapportionment decisions protect equality of voting power against quantitative dilution through malapportionment.[91] And the Court held in *Bullock* v. *Carter*, 405 U.S. 134 (1972), that laws creating "disparity in voting power based on wealth" also are impermissible under the Equal Protection Clause.

Bullock was a challenge to a state election law that required candidates in primary elections to pay large fees—ranging up to $8,900—to have their names placed on the ballot. The Court unanimously invalidated the state law, holding that it impermissibly increased the political power of wealthy candidates and wealthy voters:

> "Many political office seekers lacking both personal wealth and affluent backers are in every practical sense precluded from seeking the nomination of their chosen party, no matter how qualified they might be, and no matter how broad or enthusiastic their popular support. . . . [T]here is the obvious likelihood that this limitation would fall more heavily on the less affluent segment of the community, whose favorites may be unable to pay the large costs required by the Texas system. To the extent that the system requires candidates to rely on contributions from voters in order to pay the assessments, . . . it tends

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determining who may participate in political affairs . . . undermines the legitimacy of representative government." *Kramer* v. *Union Free School Dist.* 395 U.S. 621, 626 (1969).

[91] *See, e.g., Reynolds* v. *Sims*, 377 U.S. 533, 562 (1964); *Wesberry* v. *Sanders*, 376 U.S. 1 (1964).

> to deny some voters the opportunity to vote for a candidate of their choosing; at the same time it gives the affluent a power to place on the ballot their own names or the names of persons they favor . . . [thus creating a] disparity in voting power based on wealth . . . ." 405 U.S. at 144.

The Court struck down the law on the ground that it impermissibly

> "utilizes the criterion of ability to pay as a condition to being on the ballot, thus excluding some candidates otherwise qualified and denying an undetermined number of voters the opportunity to vote for candidates of their choice." *Id.* at 149.

The court of appeals found those decisions apposite here:

> "It would be strange indeed if, by extrapolation outward from the basic rights of individuals, the wealthy few could claim a constitutional guarantee to a stronger political voice than the unwealthy many because they are able to give and spend more money, and because the amounts they give and spend cannot be limited." Ct. App. Op. 1517.

Appellants argue that these decisions are irrelevant because they held unconstitutional government-imposed disabilities based on wealth. Appellants' Br. 119-20. But we do not argue that the inequality flowing from large contributions is unconstitutional—only that, as these cases show, laws reducing that inequality help to effectuate the First Amendment. The Constitution does not require Congress to eliminate disparities in political power resulting from disparities in wealth, but it permits Congress to do so.

> "If financial barriers to the right to vote are constitutionally forbidden, there is a legitimate argument that reduction of financial barriers to the right to influence voters is constitutionally *permitted*. And if the Constitution requires that each man's vote count equally, may not that fact be deemed pertinent in consideration of the validity of measures intended to reduce inequalities in men's opportunities to affect the vote."[92]

Giving and spending limits, by reducing the power of "big money," stimulate political participation by ordinary citizens. The record in this case shows how effective the challenged statutes already have been in that regard. In past years, only a tiny fraction of Americans have contributed most of the money used in political campaigns. Pp. 65-66, *supra*. These limits have begun to change that phenomenon.

Ordinary people have been encouraged to make gifts that will not be dwarfed by huge contributions. Candidates who voluntarily limited gifts to their campaigns before the legal limits became effective received many contributions from persons who had never before given to a candidate.[93] And this new interest of small givers

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[92] A. Rosenthal, *supra* note 31, at 24 (emphasis in original); *see* Nicholson, *Campaign Financing and Equal Protection*, 26 Stan. L. Rev. 815, 840 (1974).

[93] *See* the experiences of Ramsey Clark and Senator Mathias, Findings I, ¶¶ 173-78, 182-87, IIA J.A. 257-59, 260-62. Senator Mathias received letters showing vividly the impact of his contribution limit. For example:

> "Enclosed is a check for $10. I cannot contribute more, as I am a student paying my own tuition and I have very little income. But I strongly support your commitment to finance your campaign without submitting to the influence of large contributors."
>
> "I approve of and commend Senator Mathias' efforts to reform our campaign laws, so that politics in America need not

has continued, as shown by the impressive fund-raising records of candidates for the Presidency in 1976[94] and by the success of the dollar check-off to the Presidential Election Campaign Fund.[95] After the special Senate election held recently in New Hampshire, former Congressman Wyman's campaign manager said:

> "In the old days, we could have tapped a few contributors for $10,000 each and taken care of financing. The law forced us . . . to broaden our base with smaller contributions. That was clearly the intent of the law."[96]

3. *Giving and Spending Limits Will Lower the Financial Barrier to the Entry of Additional Candidates and Parties*

The barrier to entry posed by high campaign costs harms not only the candidates who are excluded. It also impoverishes the nation's political discourse, harming all who might have responded to a new political voice. Giving and spending limits will help to increase both the

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be dominated by the very rich and the corrupt. I am enclosing my check for $50.00 to advance this cause. The only stipulation which I place on this contribution is that it be returned to me in the event that Senator Mathias abandons these guidelines during the campaign. In return I pledge that should you notify me that this 1974 campaign is in financial difficulty, I shall contribute an additional $50.00."

"Your action concerning fund raising for your coming campaign is most impressive and a giant step in the right direction. It is also an excellent example for your colleagues. Therefore, for the first time in my life, I am making a political contribution." Mathias Affidavit, *supra* note 43, ¶ 18.

[94] Findings I, ¶ 166 (Rep. Morris K. Udall); *id.* ¶ 196, IIA J.A. 263-64; *see* pp. 122-23, *infra*.

[95] *See* p. 185, *infra*.

[96] The New York Times, Sept. 22, 1975, at 12, col. 3.

number and the diversity of voices heard in politics by removing access to wealth as a qualification for office.

This Court confirmed the importance of that objective in *Bullock* v. *Carter*, 405 U.S. 134 (1972). As noted above, it held that one impermissible feature of the large filing fees was that unwealthy candidates were "in every practical sense precluded from seeking the nomination of their chosen party." *Id.* at 143. High campaign costs are just as preclusive. "[T]he task of fund raising frequently appears hopeless to well-qualified candidates who wish to advance a program or to challenge the record of an incumbent." D. Adamany and G. Agree, *supra* note 48, at 21.[97] Applying *Bullock*, the Court has held that a state may not exclude an indigent candidate from the ballot for failure to pay even a modest filing fee. *Lubin* v. *Panish*, 415 U.S. 709 (1974).

Spending limits are the only way to slow the meteoric rise of campaign costs. The FECA of 1971 was in effect for the 1972 and 1974 elections but did not halt the campaign arms race. H.R. Rep. No. 1239, *supra* note 56, at 3; S. Rep. No. 170, *supra* note 59, at 1-2. Limits on spending that apply equally to all candidates in a race will free the candidates from monetary one-upmanship and open the field to a greater number of candidates. The Wisconsin Supreme Court relied on these considerations in upholding that state's spending ceilings for state candidates.[98]

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[97] Indeed, the record in this case suggests that two of the appellant political parties consider a potential candidate's access to wealth as a factor in their decision to nominate him. *See* Mahoney Deposition Tr. at 35-36 (Conservative Party of the State of New York); Crane Deposition Tr. at 28-29 (Libertarian Party).

[98] *State* v. *Kohler*, 200 Wis. 518, 228 N.W. 895 (1930).

The first salutary results can already be seen in the unusual number of candidates actively seeking the Presidency in 1976. See pp. 122-23, *infra*. At least one of them has described the new giving and spending limits as making it possible for members of the House of Representatives to compete effectively with the Senators and governors who have traditionally dominated presidential elections. Affidavit of Morris K. Udall, ¶ 7.

In sum, far from suppressing political activity, giving and spending limits are a political Magna Carta for the many persons whose political activity and influence was previously eclipsed by the spending power of the wealthy few.[99]

B. Reasonable Giving and Spending Limits Will Not Restrict Freedom of Expression

Appellants argue that Congress may not limit campaign giving or spending because such activities are "pure speech." They reason that some forms of political speech require that money be spent for drafting, printing, mailing, or broadcasting, and that any limits whatever on the amounts spent for such purposes unconstitutionally abridge the right of free speech itself. Appellants' Br. 48. Similarly, the United States as *Amicus* asserts that giving and spending limits are restrictions on speech because, "Many if not most of the benefits attributed to

[99] The American Bar Association Special Committee on Election Reform has adopted a Resolution and Report endorsing legislation to limit "[c]ampaign contributions . . . to reasonable amounts." Resolution 125A (Aug. 1975). Appellants assert that the Special Committee "substantially adopt[s] appellants' views." Appellants' Br. 75 n.7. That is not true. The Resolution and Report endorse contribution limits, disclosure, the independent Federal Election Commission, and the concept of public financing.

FECA stem directly from its impact upon communication." United States *Amicus* Br. 26.

Those arguments misconceive the manner in which untrammeled money has harmed the electoral process. They also misconceive the means by which giving and spending limits will accomplish their purposes.

Giving and spending limits are aimed at the harmful effects of unlimited money—effects that occur regardless of whether the money is spent to disseminate speech. The influence of large contributions on candidates and elected officials occurs without regard to any speech of the donor or the recipient. Such contributions influence their recipients not because they create communication but because they create an improper obligation in favor of the donors—in appellants' words, "the activity brings about results other than those which stem from persuasion." Appellants' Br. 52. Candidates and elected officials favor their large contributors simply because they dare not bite the hand that feeds them. That conflict of interest thwarts the electoral process by preventing candidates and officials from responding to the views of the many constituents who are not large donors.

As Professor Freund has said, large contributors "are in a position of exerting influence through wealth. . . . They are operating vicariously through the power of their purse, rather than through the power of their ideas"—an activity that ranks "lower in the hierarchy of First Amendment values" than speech itself.[100]

Similarly, large donors wield disproportionate power over elections not because their speech or their viewpoint is more persuasive but—as the Government as *Amicus*

[100] Freund, *supra* note 31, at 74.

recognizes—"because it has the most money behind it." United States *Amicus* Br. 32. And rising campaign costs are harmful not because they create communication but because they create an incentive to obtain ever greater amounts of contributions and a barrier to the entry of otherwise qualified candidates.[101] In short, none of the harms at which these limits aim arises from the fact that the person regulated is communicating, or from the effect of his message on his audience. The ill effects to be prevented would arise even if the giver's or spender's conduct had no communicative element whatever.

Giving and spending limits correct these evils by removing the corrosive effects of money itself. They are not censorial—any effect on communication is incidental, not the means by which the limits accomplish their goals. An illustration of this fact is provided by the Federal Communications Commission's recent ruling that the "equal time" rule of the Communications Act does not apply to candidate press conferences or debates between candidates.[102] By removing an obstacle to broadcast coverage of those events, the ruling will produce a wider reach for candidate speech on electoral matters at no cost to candidates or their supporters. It will do so without in any way frustrating the objectives of the new giving and spending limits. Thus, it illustrates that the limits do not depend on curtailment of speech to accomplish their goals.

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[101] *See* Comment, *Free Speech Implications of Campaign Expenditure Ceilings*, *supra* note 79, at 216; Note, *Campaign Spending Regulation: The Failure of the First Step*, 8 Harv. J. Legis. 640, 644 (1971).

[102] *In re Petitions of Aspen Institute Program on Communication & Society, et al.*, FCC 75-1090 (Mem. Op. & Order, Sept. 25, 1975), *pet'n for review filed*, No. 75-1951, D.C. Cir., Sept. 26, 1975.

Congress was not concerned about the consequences of anyone's words or ideas but about the effects of large donations and rising costs themselves. By removing those effects, the limits free candidates and elected officials to be *more* responsive to the ideas of all, according to their merit. Monetary limits attack the effects of money at their source; as the Government's *Amicus* Brief says of the draft-card law in *O'Brien*, "every one of [their] goals . . . could be achieved without regard to any effect upon communication." United States *Amicus* Br. 27.[103]

Thomas v. *Collins*, 323 U.S. 516 (1945), and *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), cited in the Government's *Amicus* Brief at 32-34, are therefore inapposite. Both cases disapproved prohibitions *against speech itself*, which were based on the "bad" economic motivations of the speakers. Limits on campaign giving and spending forbid no speech; they leave everyone free to speak his mind in campaigns, regardless of his motivations. They merely limit the use of money in campaigns—regardless of whether it is used in connection with speech and again regardless of motivations—because of the proven evils attributable to the money itself.[104]

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[103] *See* Ely, *Flag Desecration: A Case Study in the Roles of Categorization and Balancing in First Amendment Analysis*, 88 Harv. L. Rev. 1482, 1496-97 (1975).

[104] The Government's *Amicus* Brief (at 37-41) suggests that the limits are intended to prevent people from being "annoyed by 'excessive' costly communication" because it is "noisy" or "drowns out" other speakers—an interest that might be viewed as relating to the suppression of at least the quantity of communication itself. Likewise, appellants assert that the limits are designed to prevent "too much communication." Appellants' Br. 80. However, reducing "noisy" or "excessive" communication is not a goal of these limits.

As the legislative record shows, Congress was concerned about the effects of money, regardless of its relation to communication.

For similar reasons, appellants and the Government's *Amicus* brief also misjudge the relevance of this Court's decisions striking down restrictions on the press. Appellants' Br. 47, 81, 118-19; United States *Amicus* Br. 12-13, 16, 44, 47. The prohibition of election-day campaign editorials voided in *Mills* v. *Alabama*, 384 U.S. 214 (1966), was a direct restriction on expression by the press. Appellants assert that, if it had been a ban on spending money to publish election-day editorials, it would be indistinguishable from the spending limits challenged here. The analogy is only superficial. A spending ban imposed for a purpose that could only be achieved by suppressing the editorials might be as invalid as the law struck down in *Mills*. But the spending limits in these laws can accomplish their ends without regard to whether they keep anyone from speaking. They attack ill effects of spending unrelated to speech. And, as noted below, they are carefully drafted to avoid any restriction on the press.

Grosjean v. *American Press Co.*, 297 U.S. 233 (1936), is equally inapposite. The Court there voided a special tax on newspapers which had "a long history of hostile misuse against the freedom of the press" and was a "deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guaranties." *Id.* at 250. In effect, the tax was a regulation of content, applying almost wholly to those newspapers in Louisiana which were opposed to the political regime then in

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And the court of appeals never mentioned "noisiness" as a justification for the limits. *Kovacs* v. *Cooper*, 336 U.S. 77 (1949), discussed *infra*, is relevant not because these statutes share its concern about the "noisiness" of speech but because *Kovacs* illustrates the permissibility of regulating speech-related conduct to serve legitimate goals unrelated to the suppression of ideas.

power.[105] The Court stressed that newspapers may be taxed for other, legitimate purposes whose achievement does not depend on suppression of speech, even though such a tax would reduce the money available for publishing. In fact, a year later, the Court dismissed an appeal from a decision upholding the application to newspapers of a nondiscriminatory privilege tax. *Giragi* v. *Moore*, 301 U.S. 670 (1937). Similarly, the wages, prices, trade practices, and supplies of the press may be regulated in an evenhanded manner for purposes unrelated to speech, even though this may also reduce the resources available for publishing. *Associated Press* v. *United States*, 326 U.S. 1 (1945). In the same way, campaign giving and spending limits may be imposed to serve purposes that are not achieved through suppression of speech, even if they incidentally impinge on campaign expression.

Moreover, decisions such as *Mills*, *Grosjean*, and *Miami Herald Publishing Co.* v. *Tornillo*, 418 U.S. 241 (1974), reflect in part the special role of the press in our system of freedom of expression. The critical importance of a free press in our history requires that the most extreme necessity be shown to justify any direct restriction on its freedom to publish. *E.g.*, *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964); "Or of the Press," Address of Justice Potter Stewart, Yale Law School Sesquicentennial Convocation (Nov. 2, 1974). *Compare New York Times Co.* v. *United States*, 403 U.S. 713 (1971), *with Gravel* v. *United States*, 408 U.S. 606 (1972). The decisions placing some limits on the rights of reporters to gather news, *Pell* v. *Procunier*, 417 U.S. 817 (1974); *Branzburg* v. *Hayes*, 408 U.S. 665 (1972), do not erode that principle. In light of the special role

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[105] Alfange, *Free Speech and Symbolic Conduct: The Draft-Card Burning Case*, 1968 Sup. Ct. Rev. 1, 33-34.

of the press, laws regulating campaign practices must scrupulously respect its editorial freedom—as these laws clearly do. T. Emerson, *supra* note 31, at 631-40, 667-71; *see* pp. 158-60, *infra*.

Moreover, the spending of large amounts of money is conduct, not speech. This Court has repeatedly held that nonspeech conduct is not entitled to the same protection as speech, even when engaged in for purposes of expression. For example, in *Cox* v. *Louisiana*, 379 U.S. 559, 564 (1965), it upheld a statute banning demonstrations in or near a courthouse:

> ". . . We are not concerned here with such a pure form of expression as newspaper comment or a telegram by a citizen to a public official. We deal in this case not with free speech alone, but with expression mixed with particular conduct . . . .
>
> "We hold that this statute on its face is a valid law dealing with conduct subject to regulation so as to vindicate important interests of society and that the fact that free speech is intermingled with such conduct does not bring it constitutional protection."

The Court in *Cox* held that the statute was justified by the state's interest in preventing its courts from being subjected to improper influences—an interest similar to that served by these statutes:

> "It is, of course, true that most judges will be influenced only by what they see and hear in court. However, judges are human; and the legislature has the right to recognize the danger that some judges, jurors, and other court officials, will be consciously or unconsciously influenced by demonstrations in or

> near their courtrooms both prior to and at the time of the trial. A State may also protect the judicial process from being misjudged in the minds of the public. . . ." *Id.* at 565.

These considerations were held to justify "a legislative determination based on experience that such conduct inherently threatens the judicial process." *Id. See also Cameron* v. *Johnson*, 390 U.S. 611 (1968). Surely Congress in this case had no less power to remove the danger that elected officials "will be consciously or unconsciously influenced" by massive campaign contributions, and to "protect the [political] process from being misjudged in the minds of the public." [106]

Conduct that merely amplifies the effects of speech can also be regulated to serve a non-censorial purpose. In *Kovacs* v. *Cooper*, 336 U.S. 77 (1949), the Court upheld a city ordinance forbidding the use of loudspeakers emitting "loud and raucous noises" on the public streets. It affirmed the conviction of a person who had used a sound truck to publicize his views on a pending labor dispute, holding that his First Amendment right to speak

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[106] *See also Giboney* v. *Empire Storage & Ice Co.*, 336 U.S. 490 (1949); *Zemel* v. *Rusk*, 381 U.S. 1, 16-17 (1965); *Broadrick* v. *Oklahoma*, 413 U.S. 601, 614 (1973).

Mr. Justice Black, who believed that the First Amendment's protection of *speech* is absolute, nonetheless consistently recognized that conduct merely related to speech is entitled to a lesser degree of protection. *E.g., Giboney* v. *Empire Storage & Ice Co., supra; Street* v. *New York*, 394 U.S. 576, 609-10 (1969) (dissenting opinion); *Tinker* v. *Des Moines School Dist.*, 393 U.S. 503, 515 (1969) (dissenting opinion).

Mr. Justice Douglas has expressed the same view. *E.g., Communist Party* v. *Subversive Activities Control Board*, 367 U.S. 1, 173-74 (1961); *Teamsters Local 695* v. *Vogt, Inc.*, 354 U.S. 284, 295 (1957) (dissenting opinions). *See also United States* v. *CIO*, 335 U.S. 106, 139-40 (1948) (Rutledge, Black, Douglas, Murphy, J.J., concurring).

did not prevent reasonable regulation of place, time, and volume. Mr. Justice Frankfurter, concurring, explained:

> "Only a disregard of vital differences between natural speech, even of the loudest spellbinders, and the noise of sound trucks would give sound trucks the constitutional rights accorded to the unaided human voice. Nor is it for this Court to devise the terms on which sound trucks should be allowed to operate, if at all. These are matters for the legislative judgment controlled by public opinion. So long as a legislature does not prescribe what ideas may be noisily expressed and what may not be, nor discriminate among those who would make inroads upon the public peace, it is not for us to supervise the limits the legislature may impose in safeguarding the steadily narrowing opportunity for serenity and reflection. Without such opportunities freedom of thought becomes a mocking phrase, and without freedom of thought there can be no free society." *Id.* at 96-97.

The public interests here are different from those in *Kovacs*—not protection against noise, but against the corrosive effects of money. Much more clearly than in *Kovacs*, these laws can achieve their goals regardless of their effect—or lack of effect—on the volume or reach of speech itself. Campaign money may, of course, be used as a means of amplifying the reach of "the unaided human voice." But reasonable and evenhanded limits on giving and spending serve purposes unrelated to money's usefulness in this respect. They suppress no one's ideas or speech. Any incidental effect in reducing the amplification of expression by the wealthy does not offend the First Amendment. As Professor Freund has said:

> "The right to speak is, I submit, more central to the values envisaged by the First Amendment than the right to spend. We are dealing here not so much with the right of personal expression or even association, but with dollars and decibels. And just as the volume of sound may be limited by law, so the volume of dollars may be limited, without violating the First Amendment." [107]

Professors Alexander Bickel and Abraham Rosenthal have expressed the identical view.[108]

Moreover, appellants are wrong in contending that reasonable giving and spending limits will necessarily lower the overall "level of political communication." Appellants' Br. 48. Appellants' stress on the amounts given or spent in the past misses the point—because it assumes that what has been, must and should be. If large contributions and expenditures have played a big role in some recent campaigns, it does not follow that future campaigns will be unable to adapt to these laws and to accomplish ample "political communication" through different means. Indeed, such adaptation is a goal of these laws.

Despite appellants' protests to the contrary, money is not all there is to campaigning. The stump has not wholly been replaced by the cash register. Citizens can—and do—participate in politics in myriad ways that do not involve giving or spending large sums of campaign money. Findings I, ¶ 5, IIA J.A. 6-8. Citizen activities that can affect the political process include joining or forming an organization dedicated to one's goals; organizing and attending rallies; distributing handbills; lobby-

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[107] Freund, *supra* note 31, at 72-73.

[108] *See* Bickel, *supra* note 31, at 65 ("I agree that regulating the giving of money is not the same as regulating speech"); A. Rosenthal, *supra* note 31, at 21 ("Spending money is not the same as speech-making, even if the former may foster the latter").

ing for or against legislation; writing letters to office-holders or newspaper editors; drafting and circulating petitions; making speeches; and contributing personal services to candidates for office. Such personal services can often replace services for which candidates would otherwise have to pay.[109] The vast majority of citizens who participate in these activities do so without spending significant amounts.[110]

To the extent that giving and spending limits restrict some avenues of political activity, the result is most likely to be an increase in these and other activities, rather than the silencing of any expression. The district court has found that:

> "Difficulty in engaging in one kind of activity [affecting the political process] may induce an individual to engage instead in a different activity." Findings I, ¶ 5, IIA J.A. 7-8.

This Court has stressed that the availability of multiple, unrestricted avenues of expression is significant in de-

[109] Even appellants' affiant Cole concluded that only about 40 percent of all campaign money has been spent for purposes directly related to expression. R. Cole, Campaign Spending in Senate Elections 30, 100-01 (1975). The remainder goes to pay staff salaries, travel expenses, the gathering of intelligence, or even, as the Watergate experience indicated, "dirty tricks" (Findings I, ¶ 128, IIA J.A. 156)—activities only indirectly related to the writing or dissemination of political speech. Appellants have not shown that any reduction in campaign spending will necessarily come out of speech-related expenses.

[110] Appellants claim that "campaign contributions tend to be less concentrated in a small percentage of the population than other forms of political activity." Appellants' Br. 62. But the facts show that 14 percent of the population have worked actively for a candidate (Findings I, ¶ 107, IIA J.A. 97), compared to the mere one percent of the people who contribute 90 percent of the money all candidates receive for their campaigns, Findings I, ¶ 100, IIA J.A. 54.

termining the permissibility of regulations that incidentally impinge on one mode of expression:

> "That more people may be more easily and cheaply reached by sound trucks . . . is not enough to call forth constitutional protection . . . when easy means of publicity are open. . . . [The challenged loudspeaker law places] no restriction upon the communication of ideas or discussion of issues by the human voice, by newspapers, by pamphlets, by dodgers." *Kovacs* v. *Cooper*, 336 U.S. 77, 88-89 (1949).[111]

Moreover, since giving and spending limits apply only to candidate-related activities, an individual can give or spend as much money as he likes to promote issues and to help issue-oriented groups to achieve goals other than the immediate election of candidates. These laws impose no limits whatsoever on giving or spending to promote ideas or causes, only on giving or spending to promote personal candidacies for office. They make the same distinction between partisan campaigning and other political activity as do the Hatch Act restrictions upheld in *United Public Workers* v. *Mitchell*, 330 U.S. 75, 99-100 (1947), and *Civil Service Commission* v. *Letter Carriers*, 413 U.S. 548, 556 (1973).

Appellants' brief itself highlights the significance of noncandidate political activities. Appellants recall successful political movements—some of which have changed history—that relied to some extent on large contributions. Appellants' Br. 122-23. But the movements they cite accomplished their ends largely *outside the electoral*

[111] *Accord, Pell* v. *Procunier*, 417 U.S. 817, 823-24 (1974); *Breard* v. *Alexandria*, 341 U.S. 622, 644-65 (1951); *United Public Workers* v. *Mitchell*, 330 U.S. 75, 99-100 (1947).

process. They illustrate the many political activities not reached by the limits of which appellants complain.[112] Appellant Mott, and others with strong political views—both wealthy and poor—may undertake an endless range of "activities [that] further the political goals and purposes of the individuals involved, as do campaign contributions." *Id.* at 125.

Appellants' concessions demonstrate how limited is the impact of campaign giving and spending limits on the "level of political communication." Such limits do not stifle political activity. They merely prevent—at the source—the abuses that flow from candidates' dependence on large private contributions. If set at reasonable levels, monetary limits will not prevent candidates from getting their messages fully to the electorate—particularly in view of the public financing provided for presidential campaigns and under consideration for congressional campaigns.[113] *A fortiori*, they will not inhibit the myriad political activities that do not involve giving large sums of money to candidates for federal office. As

[112] Appellants acknowledge that there are "at least thirty ways of participating in the political process, . . . *only three of which . . . are regulated by the challenged statutes, even though many others are of comparable or greater effectiveness* than campaign contributions and involve the use of money for political purposes." *Id.* at 125 (emphasis added).

[113] Congress is now considering bills to provide public financing for congressional campaigns. H.R. 9100; S. 564. Last year, the Senate passed a congressional public financing bill. 120 Cong. Rec. 55852 (daily ed. Apr. 11, 1974). This year, in the House, the bill already is co-sponsored by 221 Congressmen, more than a majority of the House membership. 121 Cong. Rec. H8048 (daily ed. July 31, 1975).

appellants admit, "None of these are touched by the statutes." Appellants' Br. 125.

Even if we were wrong, and the limits did depend for their effectiveness on limiting the quantity of campaign speech, the limits would be sustainable. Equal limits in a debating context are common in our free and open society and have never been thought to impose unconstitutional limits on speech—even political speech. Court rules fixing equal page limits for briefs and equal time limits for oral argument have never been thought to infringe the First Amendment. In any structured debate, rules fixing equal time are accepted as necessary methods of achieving focus and good order. Like the restrictions on the time, place, and manner of speech repeatedly upheld by this Court,[114] they are entirely neutral as between speakers and points of view. When the debate is conducted under governmental auspices, as in a judicial proceeding or an election for public office, reasonable and evenhanded rules that fix equal limits do not automatically transgress the First Amendment.

C. Reasonable Giving and Spending Limits Are Not Unnecessarily Restrictive Means To Accomplish Congress' Goals

Although giving and spending limits touch incidentally on First Amendment activities, they do so no more than reasonably necessary to preserve the integrity of the electoral process.[115] This Court has recently reaffirmed that

[114] *E.g.*, *Grayned* v. *Rockford*, 408 U.S. 104 (1972); *Cameron* v. *Johonson*, 370 U.S. 611 (1968); *Adderly* v. *Florida*, 385 U.S. 39 (1966); *Cox* v. *Louisiana*, 379 U.S. 559 (1965).

[115] As noted, we deal in Part V with appellants' complaints about the particular monetary limits contained in these laws and show that appellants have failed to prove any palpable restrictions on their political activity.

laws in this area must take the least restrictive course that will achieve Congress' goals. In *American Party* v. *White*, 415 U.S. 767, 781 (1974), a nearly unanimous Court held that electoral regulations are "constitutionally valid measures" if "reasonably taken in pursuit of vital state objectives that cannot be served equally well in significantly less burdensome ways." Where a variety of equally effective means are available to achieve compelling public interests, Congress may not choose those which are significantly more intrusive on First Amendment interests. *Shelton* v. *Tucker*, 364 U.S. 479, 488 (1960); *see* Note, *Less Drastic Means and the First Amendment*, 78 Yale L.J. 464 (1969). However, the fact that less intrusive measures can be imagined does not warrant a finding of unconstitutionality unless it is clear that those measures can accomplish the congressional goals with equal effectiveness. "The Constitution does not require the state to choose ineffectual means to achieve its aims." *Storer* v. *Brown*, 415 U.S. 724, 736 (1974); *id.* at 761 (Brennan, J., dissenting); *Rosario* v. *Rockefeller*, 410 U.S. 752, 762 n.10 (1973).

It need not be demonstrated that every conceivable application of the statute is necessary to further the statutory objectives. *Procunier* v. *Martinez*, 416 U.S. 396, 414 (1974); *United Public Workers* v. *Mitchell*, 330 U.S. 75, 100-01 (1947). This Court upheld the prohibition on courthouse picketing in *Cox* v. *Louisiana*, 379 U.S. 559 (1965), to protect the integrity of the judiciary, even though that law might apply in individual instances where such picketing would in fact have no coercive effect. A statute is not unnecessarily restrictive merely because it may affect certain innocent transactions—as

long as the statute is "generally necessary" to achieve the Government's vital ends. *Procunier* v. *Martinez*, 416 U.S. at 414.

Congress determined after exhaustive inquiry that giving and spending limits, disclosure, public financing, and independent enforcement together are necessary to preserve the integrity of the electoral process because other measures cannot achieve that purpose with equal effectiveness. For half a century, Congress has experimented with various combinations of disclosure requirements,[116] contribution limits,[117] expenditure limits,[118] public financing,[119] bribery laws,[120] and improper influence laws,[121] but those laws did not solve the urgent problems presented by the abuse of money in electoral politics.

Appellants urge that the only means constitutionally available to Congress to regulate the use of money in elections are minimal disclosure requirements and a prohibition against bribery. Appellants' Br. 77. That suggestion mocks the gravity and complexity of the problems that confronted Congress. Disclosure and bribery laws

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[116] Federal Corrupt Practices Act of 1910, 36 Stat. 822, as amended, 37 Stat. 25 (1911); Federal Corrupt Practices Act of 1925, 43 Stat. 1070, 2 U.S.C. §§ 241-256 (repealed); Federal Election Campaign Act of 1971, 86 Stat. 11, 2 U.S.C. §§ 431-454.

[117] Hatch Act of 1940, § 20, 54 Stat. 767.

[118] *Id.* § 13; Federal Election Campaign Act of 1971, Pub.L. 92-225, 86 Stat. 3, § 104(b)(c), repealed by Pub.L. 93-443, 88 Stat. 1278, § 205(b).

[119] Presidential Election Campaign Fund Act of 1966, 80 Stat. 1587, suspended, 81 Stat. 57 (1967).

[120] 18 U.S.C. § 201.

[121] *E.g.*, 18 U.S.C. §§ 599, 600.

have been on the books for fifty years, but have utterly failed to eradicate corruption, improper influence, or the appearance of both. The disclosure provisions in these laws took effect on April 7, 1972, but did not prevent the large contributions made since then or the excessive and admittedly unnecessary spending that occurred in the 1972 presidential election. *See* Findings I, ¶ 147, IIA J.A. 203; *id.* IIA, ¶¶ 78, 115 (recomputed ¶ 53), IIB J.A. 459, 475. Unless all candidates are freed of their dependence on large contributions, voters "do not have a choice between clean money candidates and dirty money candidates; all are soiled." [122] Disclosure and bribery laws alone do not serve the other goals of these statutes at all.

Neither could contribution limits alone accomplish the legislative goals. The court of appeals found, and the record amply shows, that the thirst for campaign money would produce "almost insuperable . . . problems" in enforcing contribution limits if spending were not also limited. Ct. App. Op. 1541; *see id.* at 1516, 1537-38. Spending limits are required also to lower the barrier to entry by new candidates which unlimited spending creates. *Id.* at 1539.

The conclusion that lesser means had not sufficed was amply justified by the historical record before Congress. Appellants have produced nothing that would justify this Court's substituting a different reading of history. This is not a case in which the Court can identify alternative measures plainly equivalent in effectiveness. *E.g.*, *Martin* v. *City of Struthers*, 319 U.S. 141 (1943). As the court of appeals correctly concluded:

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[122] D. Adamany & G. Agree, *supra* note 48, at 114.

> "We see no principled basis on which a court can displace the legislative judgment that reporting and disclosure are necessary, but not sufficient, remedies to achieve the objective of trammeling 'the pernicious influence of "big money" campaign contributions.'" Ct. App. Op. 1518-19, *quoting United States* v. *UAW*, 352 U.S. 567, 572 (1972) (footnotes omitted).

This Court has reached the same conclusion in decisions upholding laws *more* restrictive than these, to serve interests certainly no more compelling.

1. *This Court Has Upheld More Restrictive Limitations on Direct Political Activities*

The Court has upheld laws that restrict not mere political spending but direct political participation itself. In *Civil Service Commission* v. *Letter Carriers*, 413 U.S. 548 (1973), it upheld the Hatch Act provision forbidding federal employees from taking "an active part in political management or in political campaigns." Hatch Act § 9(a), 5 U.S.C. § 7324(a)(2). On the same day, it held that states may also restrict partisan activity by their employees—as all 50 states have done. *Broadrick* v. *Oklahoma*, 413 U.S. 601, 604-05 n.2 (1973).

Restrictions on partisan activities by public employees serve two purposes, similar to the purposes of the laws challenged here: They protect (1) the public's right to have its civil servants "enforce the law and execute the programs of the Government without bias or favoritism for or against any political party or group or the members thereof," 413 U.S. at 565, and (2) the employees' right not to be pressured by their superiors to engage in partisan politics.

This Court affirmed the appropriateness of these governmental objectives in *United Public Workers* v. *Mit-*

chell, 330 U.S. 75 (1947). In *Letter Carriers* and *Broadrick*, it "unhesitatingly reaffirm[ed]" that even the Hatch Act's broad prohibition of any partisan campaign activity by public employees is permissible to accomplish these important objectives, 413 U.S. at 556. It rejected precisely the overbreadth attack made by appellants here: that Congress could only prohibit corruption itself, not take broader prophylactic measures. The Court said:

> "[T]he joint judgment of the Executive and Congress has been that to protect the rights of federal employees with respect to their jobs and their political acts and beliefs it is not enough merely to forbid one employee to attempt to influence or coerce another. . . . Perhaps Congress at some time will come to a different view of the realities of political life and Government service; but that is its current view of the matter, and we are not now in any position to dispute it. Nor, in our view, does the Constitution forbid it." *Id.* at 566-67.[123]

The Court in *Letter Carriers* also recognized that, in order to avoid the *appearance* of corruption or bias, it may be necessary for Congress to act more broadly than merely to prohibit the undesired practices.

> "[I]t is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical *that they appear to the public to be avoiding it*, if confidence in the system

[123] As the dissenters in *Broadrick* noted, the appellants there conceded "that the State could prohibit the conduct with which they were charged [partisan campaigning for a local official] without infringing the guarantees of the First Amendment"; the dissenters found the statute to be insufficiently precise in accomplishing that goal. 413 U.S. at 621-22, 628-29 (Brennan, J., joined by Stewart & Marshall, J.J.); *see id.* at 597 (Douglas, J.). By contrast, these laws set precise dollar limits and provide for clarification of any ambiguities by the FEC.

> of representative Government is not to be eroded to a disastrous extent." *Id.* at 565.

Of course, the Hatch Act restrictions on direct political activities would be unconstitutionally broad if applied to the whole electorate. But *Letter Carriers* provides strong support for the proposition that where lesser measures have failed, Congress has latitude to impose stronger ones in order to meet compelling needs. The monetary limits challenged here are far less restrictive than the Hatch Act strictures, and there has been no demonstration that they go further than necessary to meet related and equally compelling needs.

2. *The Courts Have Upheld More Restrictive Limitations on Political Giving and Spending*

The courts have also upheld regulations of political giving and spending that are more restrictive than the limits in these laws. Federal law for many years has prohibited corporations (since 1907) and unions (since 1943) from making *any* contributions to federal electoral campaigns. 18 U.S.C. § 610; Note, *Statutory Regulation of Political Campaign Funds*, 66 Harv. L. Rev. 1259 (1953). Since 1947, that law has also forbidden corporate or union *expenditures* aimed at influencing voters at large. A corporation or union may spend only to express its views to its stockholders or members or to encourage them to make voluntary contributions to a separate segregated fund managed by the corporation or union for political purposes.[124]

[124] 18 U.S.C. § 610. The Government's *Amicus* Brief (at 35-36, 74) seriously misreads these laws to allow such separate funds to make campaign contributions and expenditures *without limit* from the money voluntarily donated by stockholders or members. In fact, the funds are political committees subject to the same contribution limits as other committees and to the $1,000 "independent expendi-

The prohibitions in Section 610 serve two purposes: to prevent undue exertion of the political power that corporations and unions possess because of their aggregated wealth, and to protect minority stockholders or members who do not wish to contribute to causes of the organization's choosing. The first of these purposes is closely related to the goals of the laws challenged here.

This Court has never been required to rule on the constitutionality of Section 610 or its predecessors. However, it has dealt with the statute on several occasions and has recognized the legitimacy of its legislative purposes. *See Cort* v. *Ash*, 43 U.S.L.W. 4773 (1975); *Pipefitters Union* v. *United States*, 407 U.S. 385, 402, 413-17 (1972); *United States* v. *UAW*, 352 U.S. 567, 593 (1957); *United States* v. *CIO*, 335 U.S. 106, 113-15 (1948).[125] In *UAW*, Mr. Justice Douglas, dissenting from the majority decision not to pass on the statute's constitutionality as applied to a union-financed radio broadcast, expressed the view of three Justices that, "If Congress is of the opinion that large contributions by

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ture" limit of Section 608(e). The exceptions in Sections 610 and 608(e)(2)(B), to which the Government's *Amicus* Brief refers, merely codify this Court's ruling in *United States* v. *CIO*, 335 U.S. 106 (1948), that organizations subject to Section 610 may spend to communicate with their members and to solicit contributions from them to a voluntary fund.

[125] The *CIO* decision construed Section 610 to allow corporations and unions to spend to communicate with their stockholders or members about federal candidates. Four Justices, concurring, thought the statute forbade such communications and that it was unconstitutional *in that respect only*. However, they added:

> *"Other applications are not in question. There can be little doubt of Congress' power to regulate the making of political contributions and expenditures* by labor unions, as well as by other organizations *and individuals*, in the interest of free and pure elections and the prevention of official corruption, by appropriate measures not trenching on those basic rights." 335 U.S. at 139 (emphasis added).

labor unions to candidates for office and to political parties have had an undue influence upon the conduct of elections, *it can prohibit such contributions.*" *Id.* at 598 n. 2 (emphasis added).[126]

The District of Columbia Circuit and the Eighth Circuit have both upheld Section 610. *United States* v. *Boyle*, 482 F.2d 755, *cert. denied*, 414 U.S. 1076 (1973); *United States* v. *Pipefitters Local 562*, 434 F.2d 1116 (8th Cir. 1970), *rev'd on other grounds*, 407 U.S. 385 (1972). *Accord*, *United States* v. *Painters Union*, 79 F. Supp. 516 (D. Conn. 1948), *rev'd on other grounds*, 172 F.2d 854 (2d Cir. 1949); *United States* v. *United States Brewers' Ass'n*, 239 Fed. 163 (W.D. Pa. 1916). The Eighth Circuit has also upheld the Public Utility Holding Company Act's ban on political contributions by registered public utility holding companies. *Egan* v. *United States*, 137 F.2d 369 (8th Cir. 1943), *cert. denied*, 320 U.S. 788 (1943). Appellants do not challenge the constitutionality of those laws.

Bans on political contributions by federal employees to other federal employees have long been recognized as constitutional. Congress in 1876 prohibited federal employees from giving money to or receiving it from other federal employees for political purposes. This Court upheld the law as a proper measure "to promote efficiency and integrity in the discharge of official duties." *Ex parte Curtis*, 106 U.S. 371, 373 (1882). The Court also upheld Section 312 of the Federal Corrupt Practices Act, which prohibited any member of Congress, any candidate for Congress, or any federal employee from giving to, or

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[126] Obviously, appellants are wrong in saying that in *UAW* "Mr. Justice Douglas would have found 18 U.S.C. § 610 (prohibiting corporate and labor-union contributions) unconstitutional." Appellants' Br. 46 n.5.

receiving from, any other such person any contribution for a political purpose. *United States* v. *Wurzbach*, 280 U.S. 396 (1930). The Court there sustained the indictment of a Congressman for receiving campaign contributions from other federal employees, saying:

> "It hardly needs argument to show that Congress may provide that its officers and employees neither shall exercise nor be subjected to pressure for money for political purposes, upon or by others of their kind, while they retain their office or employment." *Id.* at 398-99.

Successors to those statutes are found in 18 U.S.C. §§ 602 and 607, punishing both the giving and receiving of contributions among federal employees. Appellants do not challenge their constitutionality.

Unlike those *total prohibitions* on political activities, contributions, or expenditures, the giving and spending limits in the challenged statutes leave every person free to contribute or spend, where otherwise legal, up to the monetary limits in 18 U.S.C. § 608. They leave to each donor or spender an equal opportunity to participate in elections through the expenditure of money. And they leave all candidates an equal right to use money to enhance the impact of their political messages. They are clearly less restrictive than the total prohibitions previously approved by the courts.

Even the concurring Justices in *United States* v. *CIO*, *supra*, who would have struck down the *total* prohibition on corporate and union spending insofar as it prevented such entities from expressing their views to their members, said that a reasonable monetary limitation would be less objectionable under the First Amendment. 335 U.S.

at 145-46.[127] Congress exercised sound judgment in concluding that the evils of financial excesses in campaigning necessitated imposition of reasonable monetary limitations applicable to all contributors and candidates.[128]

V. APPELLANTS HAVE FAILED TO PROVE THAT THE PARTICULAR CONTRIBUTION AND EXPENDITURE LIMITS IN THESE STATUTES UNCONSTITUTIONALLY RESTRICT THEIR FIRST OR FIFTH AMENDMENTS RIGHTS

A. Appellants Have Failed To Prove That the Particular Contribution Limits Chosen by Congress Are Unreasonable or Discriminatory

In addition to attacking *any* limits on contributions, appellants also urge that the particular contribution limits Congress established violate the Constitution because they discriminate against challengers to incumbents—and

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[127] The inference drawn from their opinion by the Government's *Amicus* Brief (at 34-35 n. 16), that giving and spending limits impermissibly prevent the expression of "bloc sentiment," is therefore wrong. Reasonable monetary limits prevent no group from expressing its views, as the four concurring Justices recognized.

[128] Appellants cite two recent state court decisions voiding laws that set spending limits. Appellants' Br. 85-86. In both cases the candidate spending limits were intertwined with other provisions not contained in these laws that impermissibly subjected both candidate and non-candidate expenditures to the same ceiling. The Oregon statute invalidated in *Deras* v. *Myers*, —— Ore. ——, 535 P. 2d 541 (1975), prohibited any expenditure in support of or opposition to a candidate without the candidate's permission. Under the Washington statute, *Bare* v. *Gorton*, 84 Wash. 2d 380, 526 P.2d 379 (1974), a wealthy person or group acting without the candidate's consent could have spent the entire statutory maximum, thereby precluding expenditures by the candidate himself. Both statutes thus resembled former Title I of the FECA, held invalid in *ACLU, Inc.* v. *Jennings*, 366 F. Supp. 1041 (D.D.C. 1973), *vacated as moot*, 43 U.S.L.W. 3673 (1975). As we show below (pp. 158-60), Congress carefully drafted these laws with the *Jennings* problem in mind.

minor party and independent candidates—by denying them the large gifts allegedly needed to wage "effective" campaigns and to obtain the "seed money" allegedly needed to support a "viable" campaign.

1. *Appellants Have Failed To Prove That the Contribution Limits Prevent Any Class of Candidates from Conducting "Effective" Campaigns*

Appellants assert that incumbency benefits a candidate and that major party candidates have advantages over minor party and independent candidates. They suggest that one means by which the disadvantaged can overcome their handicaps is to outspend their opponents; but they complain that such outspending is impossible if the size of contributions is limited and if ceilings on total expenditures are established.[129] Such assertions are mistaken in fact and are beside the point.

Of course incumbents have inherent advantages over challengers that derive from the holding of office. They may also have disadvantages that derive from voter perception of their conduct in office.[130] In any event, these advantages and disadvantages are not created or increased by the challenged contribution limits. Where incumbents use their offices for partisan purposes, that practice itself can be remedied.

Appellants appear to believe that incumbents exploit the perquisites of federal elective office to give themselves a financial advantage over challengers, and that challengers must be allowed to raise more large contribu-

[129] We deal here with the alleged discriminatory effects of the contribution limits. In Part V-B, *infra*, we deal with the ceilings on candidate expenditures, and in V-C with the ceilings on "independent" expenditures.

[130] *See* D. Dunn, *supra* note 34, at 7-8.

tions to overcome this fact. If incumbents do make improper partisan use of the perquisites of their offices, remedies are available to prevent that practice. For example, a suit is currently in progress challenging the alleged political abuse of the frank. *Common Cause* v. *Klassen*, C.A. No. 1887-73 (D.D.C.). The proper legislative or judicial remedy for any such abuse is not to invalidate these neutral campaign reform measures, but to attack the abuses directly.

Appellants' attack fails to recognize that the need for money in politics is relative and that the contribution limits will apply equally to incumbents and challengers, major parties and minor parties, alike. The FECA Amendments permit individuals to contribute $1,000 per candidate per election (and not more than $25,000 to all candidates per year). Certain organizations are permitted to contribute $5,000 per candidate per election. These limits are evenhanded and neutral on their face. They apply regardless of the identity or views of the donor or the recipient. The lines drawn by Congress

> "are not aimed at particular parties, groups, or points of view, but apply equally to all. They discriminate against no racial, ethnic, or religious minorities. Nor do they seek to control political opinions or beliefs, or to interfere with or influence anyone's vote at the polls." *Civil Service Commission* v. *Letter Carriers*, 413 U.S. 548, 564 (1973).

The constitutionality of a statute so neutral on its face does not become doubtful because it may adversely affect some proportion of challengers or minor party and independent candidates in a random fashion, just as it may adversely affect some proportion of incumbents and major party candidates. A showing that the law will sometimes operate in favor of one faction and sometimes

in favor of another is insufficient proof that constitutional guarantees have been violated. *See Hunter* v. *Erickson*, 393 U.S. 385, 394 (1969) (Harlan, J., concurring). Rather, it is necessary to show that the statute necessarily disadvantages challengers or minor party candidates and favors incumbents or major party candidates as a class. *See Gordon* v. *Lance*, 403 U.S. 1, 7 (1971); *Jefferson* v. *Hackney*, 406 U.S. 535, 548-49 (1972); *cf. James* v. *Valtierra*, 402 U.S. 137, 141-43 (1971). The record before this Court shows no such disadvantaged class.

Appellants carry the burden as plaintiffs of proving that the contribution limits have a "real-life impact" of discriminating against challengers or minor party and independent candidates as discrete classes of candidates. *Cf. Whitcomb* v. *Chavis*, 403 U.S. 124, 146 (1971). Their statistical demonstrations fall far short of meeting that burden. As the court of appeals concluded:

> "We have considered the charge that the limits set by Congress work an undue discrimination in favor of incumbents. Although plaintiffs sought findings in support of this theory, Judge Corcoran properly declined to provide such findings in light of the speculative nature of the assertions. The material available to the court looks both ways. The political scientists draw diametric conclusions from the available information." Ct. App. Op. 1540-41 (footnote omitted).

The record is at worst indecisive. It permits only the conclusion that the impact of contribution limits on elections varies in each case, along with the innumerable other interacting variables of the political vortex. Indeed, the record evidence refutes appellants' claim that the contribution limits necessarily discriminate against

a class comprised of all or even most challengers, or against a class of all or even most minor party and independent candidates.

The best available data of record, taken from the contribution and expenditure records of all 1972 and 1974 federal elections, [131] show that there is no basis for the assertion that contribution limits will reduce the relative ability of challengers or minor party and independent candidates to raise campaign money, as compared to their opponents. Most incumbents and major party candidates have always outstripped their opponents in the ability to raise and spend campaign funds, particularly in the ability to raise large contributions. This is one advantage of incumbency that appellants studiously ignore. The contribution limits on the whole bite deeper into the traditional sources of financial support for incumbents and major parties than any other putative class.[132]

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[131] The data are found in Part IIA of the district court's findings (cited as "Findings IIA") and are derived from computer studies by the Common Cause Campaign Finance Monitoring Project based on official reports. The court of appeals relied properly on these findings exclusively in discussing the 1972 and 1974 elections. Ct. App. Op. 1540, n. 105.

Appellants also make use of these findings, but in certain instances they use figures drawn from a study by one of their affiants, Roland J. Cole. Appellants cite the Cole materials as "Findings II, B—, p. ——, App. ——." Appendix A to this brief describes the Common Cause and Cole studies and explains why this Court should, like the court of appeals, avoid reliance on the Cole materials.

[132] If the $1,000 individual contribution limit had been in effect for the 1974 congressional elections, incumbents would have given up 1½ times as much as challengers. Findings IIA, ¶ 115 (¶ 55 recomputed), IIB J.A. 475. If the $5,000 limit on political committees had been in effect for the 1974 elections, incumbents would have given up three times as much as challengers. Findings IIA, ¶ 80, IIB J.A. 459.

Available 1972 and 1974 figures show that challengers and minor party and independent candidates on the whole *would have been in approximately the same or a better position* relative to incumbents and major party candidates *if the contribution limits had been in effect.* The following table indicates the amounts raised by major party challengers as a percent of the amounts raised by major party incumbents in the 1972 presidential and 1974 congressional elections (1) if all contributions, however large, are considered, and (2) if only the first $1,000 of any contribution from an individual is considered: [133]

TABLE 1

Amount Raised by Challengers As a Percent of Amount Raised by Incumbents

	(1) With No Contribution Limit	(2) Assuming $1,000 Contribution Limit
1972 Presidential Race	64.3%	94.0%
1974 Congressional Races	56.1%	55.3%

Thus, the imposition of a $1,000 limit on individual contributions would have substantially *strengthened* the rela-

[133] Based on Findings IIA, ¶¶ 74, 115 (recomputed ¶¶ 57-58), IIB J.A. 458, 476. Similar results obtain if the excess of organizational contributions over $5,000 is subtracted. Findings IIA, ¶¶ 77-90, IIB J.A. 459-61.

The Common Cause studies on which these figures are based do not permit similar comparisons to be made for the 1972 congressional elections.

We recognize, of course, that if contributions by individuals over $1,000 had in fact been barred in 1972 and 1974, the results might have differed somewhat from the actual amounts raised less the excesses over $1,000 since the fund-raising methods of candidates would have differed. But any differences are purely speculative. The 1972 and 1974 facts of record provide the best available evidence of what would have happened in 1972 and 1974 under the contribution limits of the challenged legislation and what is likely to happen in 1976.

tive financial position of the *challenger* in the 1972 presidential race,[134] and would have had no material effect on the relative financial strength of challengers in the 1974 congressional races.

The following table makes the same comparison for minor party and independent candidates vis-a-vis major party candidates: [135]

TABLE 2

Amount Raised by Minor Party and Independent Candidates as a Percent of Amount Raised by Major Party Candidates

	(1) With No Contribution Limit	(2) Assuming $1,000 Contribution Limit
1972 Presidential Race	1.05%	1.85%
1974 Congressional Races	1.73%	1.73%

Again, these data suggest no material effect on the relative financial position of minor party or independent candidates opposing major party candidates in the 1974 con-

[134] If a $1,000 individual contribution limit had been in effect in 1972, $33.1 million in contributions to President Nixon and $13.2 million in contributions to Senator McGovern would have been eliminated. Findings IIA, ¶ 73, IIB J.A. 457.

[135] Based on Findings IIA, ¶¶ 75, 115 (recomputed ¶¶ 59-60), IIB J.A. 458, 476-77. No organizational contributions over $5,000 went to minor party or independent candidates in the 1974 congressional races. Findings IIA, ¶ 80, IIB J.A. 459.

If a $1,000 individual contribution limit had been in effect in the 1972 presidential race, only $66,000 in contributions to minor party and independent candidates would have been eliminated—six percent of their total contributions. In contrast, $13.2 million—or 34 percent—of McGovern's contributions and $33.1 million—or 55 percent—of Nixon's contributions would have been eliminated by the limit. Findings IIA, ¶ 73, IIB J.A. 457. Thus, the facts clearly show that "patrons or large donors" do not "disproportionately support small or struggling parties." *Cf.* United States *Amicus* Br. 61.

gressional races, and a strengthening of minor party and independent candidates in the 1972 presidential race.

These past election statistics demonstrate that the challenged contribution limits are not likely to reduce—and may increase—the fund-raising ability of challengers and minor party and independent candidates, relative to incumbents and major party candidates. As the court of appeals concluded:

> "In a broad sense, the statute may favor relative newcomers, by limiting the access of incumbents to large donations." Ct. App. Op. 1541.

These are, of course, cumulative figures for the universe of incumbents and various classes of challengers. Within that universe, there were inevitable exceptions. But when a statute is attacked as unconstitutional on its face, the plaintiffs must demonstrate an intentionally or necessarily discriminatory effect on definable classes of affected persons:

> "In reversing the District Court we should emphasize that the equal-protection claim below was based upon an alleged *infirmity that attaches to the statute on its face* . . . . It might well be that, designedly or otherwise, a multi-member constituency apportionment scheme, under the circumstances of a particular case, would *operate to minimize or cancel out the voting strength of racial or political elements of the voting population.* When this is demonstrated it will be time enough to consider whether the system still passes constitutional muster. This question, however, is not presented by the record before us." *Fortson* v. *Dorsey*, 379 U.S. 433, 438-39 (1965).

Appellants argue that the impact of the challenged contribution limits is most pronounced in "closely contested" campaigns—according to appellants' definition, those in which challengers received at least 45 percent of the vote. Appellants' Br. 129. Appellants have yet to demonstrate the truth or relevance of this suggestion. But accepting *arguendo* appellants' premise, the facts suggest that even when attention is narrowed to the races appellants define as "close," the challenged contribution limits may actually improve the financial position of challengers relative to incumbents. In the six 1974 Senate elections defined by appellants as "close," incumbents raised $225,948 in amounts over the new contribution limits, while challengers raised only $95,395 over those limits. Findings IIC, ¶ 8, IIB J.A. 676-78. In the 81 House races in 1974 defined by appellants as "close," only 3.5 percent of the total contributions received by challengers would have been eliminated if a $1,000 individual contribution limit had been in effect. *See* Findings IIC, ¶¶ 1, 9, IIB J.A. 586, 679-96. In 71 of these 81 races, only five percent or less of the challengers' total contributions would have been eliminated; in 30 of these 71 races, no contributions at all would have been eliminated. *Id.*

Moreover, the contribution limits will have another salutary effect from the perspective of challengers—they will tend to decrease the significant advantage which incumbents enjoy in raising special interest group money. Findings IIA, ¶¶ 77-90, 93-98, 105, 110-11, IIB J.A. 459-61, 462-65, 467-68, 470-72. And a study performed by Congressman Anderson suggests that such contributions play a more critical role in close elections.[136] Thus, contrary to appellants' hypotheses, the net impact of the contribution limits may be to improve the relative posi-

[136] *Hearings on H.R. 7612 and S. 372 Before the Subcomm. on Elections, supra* note 75, at 203, 219.

tion of challengers and minor party or independent candidates in close elections as well.

2. *Appellants Have Failed To Prove That the Contribution Limits Prevent Any Class of Candidates From Obtaining "Seed Money"*

Even though the overall contribution figures for 1972 and 1974 indicate no discriminatory effect against any putative class, appellants argue that the contribution limits will nevertheless discriminate against challengers and minor party and independent candidates because those candidates have a special need for "seed money" to launch their candidacies and can obtain that money only from large contributions. Again, the theory is unproven. The evidence in this case demonstrates that any necessary "seed money" can be raised in contributions permitted by the challenged statutes.

Appellants attempt to prove their assertions concerning "seed money" by reference to the amounts of contributions received before October 1, 1974—which they label "seed money" for purposes of the 1974 House and Senate elections. Appellants' Br. 130-31. What appellants are treating as "seed money" is all monies raised prior to the last five weeks of an election. Since the term "seed money" is commonly understood to refer to funds raised by a candidate "at the outset of the campaign" (Ct. App. Op. 1532 n. 85; Appellants' Br. 130), the proffered data are utterly unrelated to their assertions.

Appellants simply assume the critical fact on which their "seed money" argument depends—that early or "seed money" can be raised only in the form of large contributions. Appellants cite Senator Buckley's 1970 race, Senator McCarthy's New Hampshire primary race,

and other examples to support their "seed money" contentions. Appellants' Br. 132-37. These examples have limited, if any, probative force. First, since large contributions were permitted during the cited races, the candidates' reliance on such contributions proves only that they raised money in what was for them the easiest way then permitted—going to a few big donors. It does not tell what these candidates would or could have done had contribution limits been in effect. Second, appellant Buckley admits that he made no effort to raise "seed money" in small amounts, and appellant McCarthy admits that he has no knowledge whether his campaign made any such effort. Buckley Deposition Tr. at 7-9; Findings III, McCarthy ¶¶ 4, 9, IIB J.A. 714, 715. Moreover, appellants have failed to show what percentage of the early money in these and other campaigns was in fact received in large contributions.[137] These circumstances reduce the statements of appellants Buckley and McCarthy to mere self-serving opinions which merit little attention.[138]

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[137] For example, the Treasurer of appellant ACU testified that in his experience large contributions usually are made late in a campaign, not at the beginning. Joy Deposition Tr. at 37, 39, 40.

[138] The district court certified Senators Buckley and McCarthy as expert witnesses despite the fact that they had not been offered or qualified as such. As appellants in this action, their potential bias is a factor in deciding what weight to accord their testimony. *Grain Dealers Mut. Ins. Co.* v. *Farmers Union Cooperative Elev. & Shipping Ass'n*, 377 F.2d 672, 679 (10th Cir. 1967). Moreover, neither Buckley nor McCarthy when questioned during his deposition could testify to his own past fund-raising practices in any detail whatsoever.

The court found these men to be experts because of their experience as campaigners and Members of Congress. According to that reasoning, all 535 Members of Congress are also experts on this subject. Since the FECA and FECA Amendments were passed by large majorities, the weight of "expert" opinion overwhelmingly contradicts appellants McCarthy and Buckley on the need for large contributions to begin a campaign.

In contrast to these speculative opinions stands formidable record evidence that candidates can and have raised substantial sums of "seed money" well in advance of an election under the FECA contribution limits or more stringent self-imposed restrictions. The large array of 1976 presidential hopefuls, many of whom are relatively unknown nationally, have raised substantial "seed money" from small contributions. The following table sets forth the amounts raised by presidential contenders from January 1, 1975—when the new contribution limits became effective—to September 30: [139]

Wallace	$2,519,713
Jackson	1,704,288
Bentsen	768,735
Ford	706,925
Udall	578,429
Carter	500,221
Reagan	396,412
Sanford	209,631
Shriver [140]	189,782
Shapp	121,742
Bayh	81,782
Harris	77,805

[139] From Federal Campaign Reports (January 1-September 30, 1975), reported in The Washington Star, October 11, 1975, at A-3, cols. 4, 6, except that receipts shown for Harris and Bond are through June 30, 1975, as reported in 1975 Cong. Q. Weekly Rep. 1962 (Sept. 13, 1975).

These figures compare favorably with the amounts raised by Senator McGovern early in his 1972 presidential campaign. As of April 7, 1972—six months closer to the election—McGovern had raised $1,367,820. Affidavit of Marian R. Pearlman, Ex. 4 to Response of Defendants and Intervening Defendants to Plaintiffs' Proposed Findings of Fact, ¶ 10.

[140] Shriver announced his candidacy just three weeks before the end of the reporting period. The Washington Star, Oct. 11, 1975, at A-3, col. 6.

McCarthy	40,040
Bond [141]	11,423

Thus, more than 13 months before the 1976 presidential election, $7.8 million in "seed money" had already been raised under the new contribution limits. And six candidates had already raised more than $500,000, including a once and possibly future third-party candidate, Governor Wallace, and three relatively unknown challengers, Senator Bentsen, Congressman Udall, and former Governor Carter.

As of October 11, 1975, eight candidates have announced that they have qualified for primary matching (Bentsen, Carter, Ford, Harris, Jackson, Shriver, Udall and Wallace). Each of these will receive a substantial sum in federal money for campaign use on January 1, 1976, and will remain eligible to qualify for additional matching funds in 1976. Public financing thus provides a new source of "seed money" to presidential candidates—who require more than congressional candidates—well in advance of the election. This money will substantially augment funds already raised and spent campaigning in 1975. Matching funds thus become, as they were designed to become, a new form of "seed money." [142]

[141] As appellants note, Bond has dropped out of the race. Appellant's Br. 132. Although Bond cited lack of funds as requiring this action, such was often the case with Presidential candidates before imposition of contribution limits. *See, e.g.*, in 1972, 30 Cong. Q. Weekly Rep. 928 (Muskie); *id.* at 587 (McCloskey); *id.* at 726 (Hartke).

[142] Appellants may argue that much of the money raised by presidential candidates thus far has already been spent on fundraising, and that few candidates have accumulated large balances. Even if this were the case, these monies have earned substantial matching funds from the public treasury, which the candidates will receive beginning January 1, 1976 without additional cost to them. The candidates furthermore have benefited in disseminating their views on the issues to the electorate while raising this

In addition, Senator Buckley—a third party candidate and an appellant who challenges these contribution limits—is evidently encountering no difficulty in raising early "seed money" for his 1976 reelection race. Between July 1 and September 30, Buckley reported receipts of $142,631, for a total raised to date of $376,325. His two opponents *together* raised $27,160 during the same period, for a total to date of $52,121.[143]

Appellants' "seed money" argument is also contrary to experience under earlier, voluntary contribution limitations. Ramsey Clark voluntarily imposed a limit of $100 —*one-tenth of the challenged limit*—on all contributions to his 1974 challenge to a three-term incumbent senator. He was able nevertheless to raise sufficient "seed money" to launch a serious campaign. Clark began his fund-raising by sending personal letters to 400 friends and

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money in small contributions. As one of the country's recognized experts in direct-mail fund-raising has recently confirmed:

> "Direct mail is a form of advertising, the same as radio, television and newspapers. Wallace will have communicated with maybe 30 million voters out there by his mailings, and it's a lot more effective than radio or television."

Interview with Richard A. Viguerie, The Washington Post, July 27, 1975, at A-1, A-12. Viguerie went on to say that another benefit of direct-mail fund-raising is that it gives a candidate a chance to develop volunteers and active supporters in every area of the country:

> "[W]hen he [McGovern] went into the primaries, he was going in with the names of 1,000 or 2,000 supporters in every congressional district, and these people had an investment in his campaign, they could be contacted for manning the polls, getting the vote out, you name it. Contrast that with Humphrey or Muskie—he had them outnumbered through his direct mail." *Id.*

See also D. Rosenbloom, Electing Congress: The Financial Dilemma 64 (1970).

[143] "Buckley is Filling His '76 War Chest," The New York Times, Oct. 12, 1975, at 61, col. 4.

acquaintances that raised $12,000-$15,000. Clark used half of this amount to finance a half-page newspaper advertisement that brought in $17,000, and these funds were used to launch a direct-mail campaign. Clark raised additional small contributions through receptions at which he spoke. In all, Clark raised approximately $864,000. The average contribution to the Clark campaign was approximately $20; fewer than 1,000 individuals contributed $100. Findings I, ¶¶ 182, 185-86, 192, IIA J.A. 260-62. Despite certain handicaps arising from the fact that Clark alone imposed such limits on his campaign—such as slow start-up and the cost of raising money—Clark believes he had an adequate opportunity to communicate and to campaign, and that he ran an effective statewide campaign. Findings I, ¶¶ 190, 192, IIA J.A. 262.[144]

Senator Mathias also voluntarily imposed a $100 limit on contributions to his Senate campaign. As the district court found, Mathias successfully raised $290,000 from at least 8,500 individuals. Findings I, ¶¶ 173-76, IIA J.A. 257-59. As appellants point out (Br. 136), Senator Mathias' campaign had $50,000 on hand when he imposed this limitation; but even a significant portion of

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[144] Appellants cite Clark's statement that while Javits appeared to outspend him by a ratio of 3 to 2, in fact he was really outspent 2 to 1 because of the extra cost of raising small contributions. Appellants' Br. 134-35. Any message to be drawn neglects the fact that Javits' fund-raising in 1974 was not subject to the FECA limits and Javits focused on large contributions. Only 6.1% of the more than $1 million which he raised was in contributions of $100 or less. *See* Reports of Receipts and Expenditures filed with the Secretary of the Senate for the period September 1, 1973 through December 31, 1974 by Senator Jacob Javits and political committees supporting him.

this amount had been raised in contributions of less than $100. *Id.* at ¶¶ 174, 176, IIA J.A. 258-59.[145]

Similarly, Senator McGovern financed the first national direct-mail appeal in his 1972 presidential campaign with $27,813, comprised of a $10,000 loan and 44 contributions averaging $405. That direct-mail appeal and subsequent appeals during the next year raised contributions from over 42,000 individuals totaling over $1,250,000.[146]

These examples—reflecting the experiences of challengers and incumbents and one third party candidate—refute appellants' contentions that "seed money" must be raised in large contributions and that this is particularly true for challengers and third party candidates. More-

[145] "Before Senator Mathias announced these limitations, his campaign organization had raised $118,745 from approximately 546 contributors. (After paying 1968 campaign debts and pre-campaign obligations, this amount was reduced to approximately $50,000.) The $118,745 was raised from 302 contributions of $100 or less totalling $25,045, and 239 contributions of more than $100 totalling $93,700. The average contribution was $217." Findings I, ¶ 174, IIA J.A. 258.

[146] Affidavit of Marian R. Pearlman, *supra* note 139, ¶¶ 7-12. Pearlman was Treasurer of McGovern's campaign; it is her opinion that:

> ". . . [I]t is possible for a candidate for the presidential nomination of a major party, having little national name recognition at the outset, to begin and conduct a successful campaign for that nomination without heavy reliance on large contributions from private individuals. By using techniques such as direct-mail solicitation, it is possible for a candidate to solicit and receive substantial amounts of money to finance such a campaign while relying largely or entirely on small contributions from a large number of individuals. Moreover, also on the basis of my experience with the McGovern for President Campaign, I have concluded that it is possible to finance a serious campaign for election as President of the United States primarily or solely on the basis of relatively small contributions from a large number of individuals." *Id.*, ¶ 4.

over, there is no showing that the contribution limits will augment any advantages incumbents already possess in raising "seed money." Appellants have not shown that the relative abilities of incumbents and challengers to raise small contributions for "seed money" differ.

Appellants argue that, in "close" races, challengers rely more heavily on loans in excess of the contribution limits for "seed money" than do incumbents. Appellants' Br. 129. However, loans that would have been precluded by the contribution limits have played a *de minimis* role in financing the campaigns of challengers in close races. Appellants neglect to state that the challenged statutes do not forbid most campaign loans. 18 U.S.C. §§ 608, 610. Approximately 68 percent of the $5.6 million lent to 1974 congressional candidates would have been unaffected by the new law, because it consisted of loans which the new law continues to permit: loans by candidates to their own campaigns up to $25,000 for a House race and $35,000 for a Senate race; loans of any amount from banks acting in the ordinary course of business as long as no individual endorses or guarantees the loans in an amount over $1,000; and loans from or guaranteed by individuals in amounts up to $1,000.[147] *See* p. 214, *infra.*

The challenged statutes would have affected only a small number of loans to 1974 challengers in "close" races, constituting only a small portion of the total funds raised by such candidates. Only 22 of the 81 challengers

[147] Derived from an extensive computer printout reflecting all individual contributions (including loans) of $500 or more to candidates in the 1974 congressional elections. This printout was provided in response to a request by appellants for production of documents, and is incorporated by reference in the findings below, Findings IIC, ¶ 6, IIB J.A. 665.

received *any* loans that would have been restricted by the 1974 law. In 15 of these 22 cases, the restricted loans represent less than five percent of the total funds raised by the challenger. In only two cases did the restricted loans represent more than ten percent of the challenger's total funds. *See* Findings IIC, ¶ 6, IIB J.A. 665; *id.* ¶ 1, IIB J.A. 586. Only three of the six Senate challengers in "close" 1974 races received any loans that would have been prohibited by the 1974 law. These represented 7.6 percent, 7.4 percent, and 0.4 percent of the total funds raised by the three affected challengers. *See id.*

At bottom, appellants argue that the Constitution forbids a remedy for improper influence in the situations that—by appellants' own contention—present the greatest potential for such influence. If appellants are correct, the candidate in need of "seed money" may be the one most utterly dependent on the benevolence of one or a small handful of political "angels" and may, therefore, be forever obligated to them. Appellants gain little by marshaling examples where a generous few have financed "worthy" causes; they are overwhelmed by the counter-examples evidencing the threat and appearance of pernicious influence. *See* Part IIIA, *supra*.

Precisely because it was so seductively easy to raise "seed money" in large contributions, candidates did so. That fact, even if proven, is not evidence that start-up financing cannot be obtained under the challenged limits. And the experience to date, discussed above, belies appellants' fears. If some challengers or minor party candidates remain who have problems raising early money, the reason may be lack of popular support. Professor Bickel, who believed that it would be "both wise and lawful" for Congress to impose contribution limits, proposed to deal

"with the problem of the remaining inequality among candidates by recognizing its legitimacy insofar as it reflects inequality in support, in initial support.

"I think the political system ought not to be embarrassed by that kind of inequality. That is the heart of it. Inequality of support is what finally decides elections, and inequality of initial support embarrasses me no more." [148]

3. *Appellants Have Failed To Prove that the $500 Exclusion for Incidental Expenses of Volunteers Violates Their First Amendment Rights*

The challenged legislation carefully excludes from the definition of "contribution" (and thus permits without limitation) personal services of all kinds provided by volunteers. 18 U.S.C. § 591(e)(5)(A). Certain incidental expenses which volunteers may incur, such as unreimbursed travel expenses, are deemed contributions to the extent they exceed $500. 18 U.S.C. § 591(e)(5). Appellants suggest that this $500 exclusion "typifies" the "repressive spirit" of the FECA Amendments, and their "gross intrusion . . . into the political activities of American citizens." Appellants' Br. 138. But the exclusion actually has the effect of allowing additional financial contributions to a campaign on top of the $1,000 contribution limit. As the court of appeals held, some limit must be placed on the exclusion as a "necessary loophole-closing provision designed to prevent contributions by indirection." This provision allows "sufficient flexibility for effective volunteer campaign assistance, without opening the door to wholesale circumvention of contribution and expenditure limits." Ct. App. Op. 1534.

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[148] Commentary, *supra* note 31, at 67.

4. *Appellants Have Failed To Prove That the Limit on Contributions by Political Committees Is Unreasonable or Discriminatory*

Appellants make two contradictory attacks on the provisions of the challenged statutes relating to contributions by political committees. Appellants first argue that the FECA has increased the relative influence of special interest groups by permitting any group of individuals that qualifies as a "political committee" under Section 608(b)(2) to contribute $5,000 to a candidate and by allowing organized interest groups such as labor unions and corporations to proliferate political committees. Appellants' Br. 68-71. Appellants claim that the legislation does not effectively dampen the ability of economic interest groups such as the dairy industry to give unlimited amounts to candidates, because "[e]very county organization" can have a political committee entitled to give up to $5,000 apiece to an unlimited number of candidates. *Id.* at 69.

To the contrary, the appellants have provided no evidence that these provisions permit circumvention of the individual or group contribution limits; the statutory scheme itself precludes the result appellants fear. To qualify, a political committee must have been registered with the FEC [149] for at least six months, have received

[149] 2 U.S.C. § 433 requires political committees to file a statement of organization with the FEC, a statement designed to ensure that political committees are in truth separate organizations. For example, the statute requires a statement of "the names, addresses, and relationships of affiliated or connected organizations," § 433(b)(2), and a statement of the continuing nature of the committee and the planned disposition of residual funds in the event of the committee's dissolution. Section 433(b)(7), (8). Furthermore, Section 434 requires political committees to report receipts and expenditures to the FEC; included in each report must be the name and address of each political committee or candidate to or from which the committee has made any transfer of funds. 2 U.S.C. § 434(b)(4).

contributions from more than 50 persons, and (except for any state political party organization) have made contributions to five or more candidates for federal office. 18 U.S.C. § 608(b)(2).

The legislative history of Section 608(b) manifests Congress' intent that only truly autonomous political committees receive the benefit of the $5,000 limit. For example, the Conference Report contains the following language:

> "A . . . question was raised . . . regarding the possibility of circumventing the limit on contributions by political committees where a national committee of a political organization may contribute the maximum allowable amount to a candidate and a state or local sub-unit or subsidiary of that committee may also contribute to the same candidate. It was the intent of the House Committee to allow the maximum contribution from each level of the organization *if the decision or judgment to make such contributions is independently exercised within the separate levels of the organization.* However, if the subsidiary or sub-unit organizations are under the control or direction of the parent organization with respect to their contributions to specific candidates, then *the organizations acting in concert would constitute one political committee* for the purpose of the contribution limits included in the House amendment bill." [150]

Moreover, appellants' tidy theoretical argument is contrary to the facts. Appellants focus on the dairy in-

[150] S. Conf. Rep. No. 1237, 93d Cong., 2d Sess. 51-52 (1974) (emphasis added). The Conference Report goes on to state that the conferees agree with the analysis of the House Report regarding the rule for application of contribution limits and the need to prevent circumvention of such limitations. *Id.*; *see also* H.R. Rep. No. 1239, *supra* note 56, at 5.

dustry, because of its prominent role in recent elections,[151] and assert that "*dairy interests can give unlimited amounts to a candidate*" through county organizations. Appellants' Br. 69 (emphasis in original). In practice, however, the power of dairy interests in making political contributions stemmed from the fact that a handful of individuals controlled contributions in vast amounts raised from across the country. On June 30, 1975, the single most important dairy committee, "the political action arm of the Associated Milk Producers, Inc.," had a cash balance on hand of $1,813,060; two other dairy committees had balances in excess of $300,000 each. The Washington Post, Sept. 21, 1975, at A-2, cols. 3, 7. Had the challenged contribution limits not been enacted, these committees would today be free to give the entire $2.4 million to a single presidential candidate—with or without the benefit of a meeting in the oval office. Under the limits appellants attack, these three committees may give no more than a total of $15,000 to a single candidate.

Second, appellants attack (Br. 141-42) as an undue burden on political activity the six-month and 50-person requirements for qualified political committees—provisions obviously designed to avoid the very artificial proliferation of committees that appellants fear. The requirements prevent individuals or groups from making cumulative contributions by forming and dissolving new political committees throughout a campaign. They also inhibit the formation of small committees that exist solely for the purpose of evading the contribution limits. *See* Ct. App. Op. 1536. Together with the requirement that a qualified committee support five or more candidates, these requirements serve to ensure the general legitimacy of

[151] *See* Findings I, ¶¶ 103, 158, IIA J.A. 101-07, 254.

political committees without preventing groups from expressing their collective political views. And of course, groups of individuals who cannot meet the requirements for qualified political committess are still free to pool their resources by forming a non-qualifying committee that makes contributions subject to the general $1,000 limit applicable to contributions by any "person" other than a qualified political committee. 18 U.S.C. § 608(b)(1).

The six-month requirement for the duration of a political committee is not an impermissible burden on the ability of citizens to engage in political activity. The six-month rule is merely a condition on the availability of the favorable contribution limit for bona fide organizations. Even where an actual restriction is involved, the Court has upheld such reasonable time limitations if, as here, they are tied to a particularized legitimate legislative purpose. *See Rosario* v. *Rockefeller*, 410 U.S. 752 (1973); *Kusper* v. *Pontikes*, 414 U.S. 51 (1973); *Marston* v. *Lewis*, 410 U.S. 679 (1973).

5. *Appellants Have Failed To Prove That the Limits on Expenditures from a Candidate's Personal or Family Funds Are Discriminatory*

Appellants assert that the limitations on the expenditures from a candidate's personal or immediate family funds (18 U.S.C. § 608(a)), invidiously discriminate against candidates without wealthy families. Appellants' Br. 139-40. However, Section 608(a) decreases the advantages already possessed by wealthy candidates. Prior to its enactment, candidates pumped tremendous family fortunes into their election effects. *See* p. 73, *supra*. The Constitution permits ameliorative legislation to eradicate existing inequality one step at a time. *Katzenbach* v. *Morgan*, 384 U.S. 641, 657 (1966); *see also Williamson*

v. *Lee Optical Co.*, 348 U.S. 483, 489 (1955). Moreover, there is no evidence that any appellant would have been harmed in the past or expects to be harmed in the future by the limits in the section. *See supra* p. 25.

6. *Appellants Have Failed To Prove That The $25,000 Aggregate Limit on Individual Contributions Is Discriminatory*

Appellants assert that the $25,000 limit on aggregate individual contributions to all candidates in a given election (18 U.S.C. § 608(b)(3)) discriminates against third party and independent candidates because donors will prefer to give their allotted amount to major party candidates who they believe have better chances for victory. Appellants' Br. 138. Yet the Chairman of appellant Libertarian Party has admitted that prior to January 1, 1975, large contributors gave to major party candidates anyway. Crane Deposition Tr. at 25-27. Not one contribution made in 1974 by an individual who gave $25,000 or more in contributions of $500 or more went to a minor party or independent candidate. *See* Findings IIC, ¶ 6, IIB J.A. 665. Appellant McCarthy—the only independent candidate before this Court—is unable to state whether the $25,000 aggregate limit might harm his campaign. Findings III, McCarthy ¶ 26, IIB J.A. 718. Appellants have not proven their case.

B. Appellants Have Failed To Prove That the Particular Expenditure Ceilings Chosen by Congress Are Unreasonable or Discriminatory

As with contribution limits, appellants' attack on expenditure ceilings is twofold: First, they assert that the First Amendment forbids Congress to establish *any* ceiling on candidate expenditures. We answer that argument in Part IV, above.

Second, appellants assert that the particular ceilings imposed by Congress are (1) too low to permit candidates to conduct "effective" campaigns, and (2) discriminatory in their effects, favoring incumbents and major party candidates over challengers and minor party and independent candidates. As demonstrated below, appellants have failed to prove either part of this contention.

1. *Appellants Have Failed To Prove That the Expenditure Ceilings Prevent Any Class of Candidates from Conducting "Effective" Campaigns*

This Court is in no position on the present record to tell Congress that it should have chosen different expenditure limits in Section 608(c). The choice of ceilings that will achieve the statutory objectives without preventing effective campaigns is peculiarly a legislative function. Congress, not the judiciary, is equipped to collect and review the wide-ranging evidence bearing on that choice. It has studied the problems of campaign finance for years, held months of hearings, and debated the practical questions at length. On such a matter of line-drawing, the case for judicial deference to legislative judgment is most powerful. *See* pp. 38-39, *supra*.

Moreover, nothing in this record suggests that the ceilings are unconstitutionally low. Appellants have sued before it is possible to see the results of even one regular election year in which the ceilings were in effect. Accordingly, the best available data are the spending figures for the 1972 and 1974 elections, set forth in the district court's findings. They show that the ceilings are not out of line with past expenditures.

In choosing limits, Congress had different objectives with respect to congressional and presidential campaigns. For congressional races, the limits are designed merely to slow further increases in spending, while for presidential races, it was essential to *roll back* the amount candidates could spend, because spending in presidential races had risen intolerably—to a point far beyond the needs of an "effective" campaign. The 1972 and 1974 figures suggest that these are exactly the effects the ceilings will have on future races.

In 1972, out of 1,009 candidates who ran in the general election for House seats, only 21, or 2.1 percent, reported total spending higher than $168,000 (the combined primary and general election ceiling, including fund-raising costs, for House candidates under Section 608(c)).[152] In 1974, of the 1,056 House candidates who ran in the general election, only 22, or 2.1 percent, spent

[152] Findings IIA, ¶¶ 40-41, IIB J.A. 448-49. Section 608(c) permits House candidates to spend $70,000 in the primary and $70,000 in the general election. Section 591(f)(4)(H) permits an additional 20 percent of the total for fund-raising. Under the statute, all expenditure ceilings are adjusted in each election year for changes in the consumer price index. The legislative history makes clear that a candidate can spend the full amount of his primary allowance regardless of whether he faces primary opposition, *see* Appendix A at 2a-3a, and the FEC has so ruled. Advisory Opinion 1975-9, 40 Fed. Reg. 36242 (Aug. 19, 1975).

These findings compare total reported spending in 1972 and 1974 to the combined limits for primaries and general elections. This is the only meaningful and accurate comparison that can be made from the reports filed in 1972 and 1974 under the FECA of 1971. Separate comparisons for primaries and general elections in 1972 and 1974 cannot be made in any meaningful way because it is impossible to determine from the reports filed for those years whether an expenditure was made to influence a primary or general election. *See* Appendix A at 4a-5a.

more than the combined spending ceiling in Section 608(c). Findings IIA, ¶¶ 18-19, IIB J.A. 442-43. Thus the overwhelming majority of House candidates spent less than the ceiling in conducting their campaigns, winning and losing.

The figures for Senate elections support the same conclusion. In 1972, of the 106 senatorial candidates who ran in the general election, only 18, or 17 percent, exceeded the combined primary and general election spending limit (9.6 cents per voting age person in a primary and 14.4 cents in a general election, including fund-raising costs). Findings IIA, ¶¶ 44, 47-48, IIB J.A. 449-50. In 1974, of the 105 senatorial candidates who ran in the general election, only 17, or 16 percent, exceeded the combined spending limit. Findings IIA, ¶¶ 23, 28-29, IIB J.A. 444-45.

Adding the figures for House and Senate races in 1972, only 39 out of 1115 candidates, or *3.5 percent*, exceeded the new limits. Adding the figures for 1974, only 39 out of 1161 candidates, or *3.4 percent*, exceeded these limits.[153]

In the 1972 presidential election, both major party candidates exceeded the combined spending ceiling ($10 million in primaries and $20 million in the general election plus fund-raising costs).[154] Former President Nixon reported spending approximately $55 million, and Senator McGovern reported spending approximately $38 million. Findings IIA, ¶ 51, IIB J.A. 451. The excessive fund-raising and spending in that race, and the abuses that

[153] In any event, the district court found that "most politicians agree that one-half of campaign expenditures are wasted, but no one knows which half." Findings I, ¶ 197, IIA J.A. 264.

resulted, were significant factors in the public demand and the congressional decision to impose ceilings lower than those amounts. The ceilings Congress selected were higher than the spending in any presidential campaign before 1972. Findings I, ¶¶ 12, 89, IIA J.A. 9-10, 49-51. Moreover, they were higher than what President Nixon's own finance chairman testified would have been sufficient in 1972. *See* p. 70, *supra*.

Further confirmation that the new limits permit "effective" campaigns comes from the first Senate race held under the new laws, the Durkin-Wyman New Hampshire special election in September. Both candidates reported expenditures within the new ceilings; yet they succeeded in turning out almost 40,000 more votes (some 18 percent) above what the same two candidates polled in their 1974 race without spending limits.[155]

Appellants attempt to show the impossibility of "effective" campaigns under the ceilings by describing an elaborate hypothetical—admittedly based on New Hampshire—in which the only newspaper in the district is "implacably opposed" to the challenger, other media mostly reach an audience outside the district, and the challenger faces a long-time incumbent Appellants' Br. 79-80. The Wyman-Durkin race shows the fallacy of looking to hypotheticals rather than facts.

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[154] Appellants incorrectly claim (Br. 84) that the Act limits the portion of general election funds a presidential candidate may spend in any one state. Only primary spending is limited to twice the Senate limit for that state. *Compare* Section 608(c)(1)(A) *with* Section 608(c)(1)(B).

[155] 1975 Cong. Q. Weekly Rep. 1995 (Sept. 20, 1975) (based on unofficial spending figures; the official reports were not available at this printing).

Wyman was endorsed by the only major newspaper, The Manchester Union Leader. He was assisted by campaign visits from the incumbent President and the President's chief rival for the 1976 Republican nomination. He was a 5-term Congressman from one of the state's two congressional districts, while Durkin's only previous offices were New Hampshire insurance commissioner and moderator of a Massachusetts town. Yet Durkin won with 53.6 percent of the vote. The ceilings necessarily caused some adjustments in the campaigns, but they certainly did not prevent "effective" campaigning.[156]

Appellants unsuccessfully attempt to draw contrary conclusions from expenditures in selected past races. They assert that, "on the basis of estimates for general election expenditures in the Senate" in 1972, 33 candidates exceeded the general election ceilings and the ceilings "would have eliminated one-third of total spending." Appellants' Br. 89. Those comparisons are based entirely on the Cole study, whose unreliability we have demonstrated in Appendix A and which the court of appeals properly disregarded. Since the errors in Cole's methodology overstate the 1972 spending in relation to the limits, they render his conclusions useless in predicting what effects the limits will have. In particular, Cole errone-

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[156] *Id.* at 1933-94 (Sept. 6, 1975), 1995 (Sept. 20, 1975); 7 Nat'l. J. Rep. 1339 (Sept. 20, 1975).

Moreover, as noted above (p. 90), the "effectiveness" of the 1976 and later campaigns may well be enhanced by an extraneous factor, the recent Federal Communications Commission ruling permitting radio and television coverage of candidate press conferences and candidate debates, free of the "equal time" restriction of Section 315 of the Communications Act. Until the results of this important change are fully known, no one can predict with confidence the minimum expenditure necessary to conduct an "effective" campaign.

ously counted as general election spending all spending during primary periods where the candidate had no serious primary opposition or was unopposed. *See* Appendix A at 3a-4a. Thus Cole has incorrectly compared the total amount spent over the full course of an election —including the primary and general election periods— with the ceilings in the challenged statutes for just one period: the general election.

Appellants attempt to justify this methodology by asserting, as did Cole, that candidates who "had serious opposition in no more than one election" aimed "the overwhelming bulk" of their spending at the more contested election. Appellants' Br. 89. As we show in Appendix A, there is no proof that this assertion is true. Even if it were true about past elections, candidates in such situations in the future will not be limited to spending only half the combined ceiling. These laws permit even a candidate who has no primary opposition to spend up to the primary ceiling during the primary period without counting it toward his general election ceiling. Thus, even if some candidates in past years have bunched their spending in the general election period, they will be free to adjust their spending to take advantage of the combined ceilings. Appellants' comparisons of total spending against partial ceilings say nothing about how the statutes will actually operate.

Appellants argue that for those who run in "fully contested" races the combined overall spending limits will "dramatically restrict" campaigns. Appellants' Br. 89. They have produced a table which simply indicates that of the 2,065 candidates who ran for the House in 1972 and 1974,[157] 66 spent in excess of the FECA limits (adjusted for inflation). *Id.* at 90. And having defined a class of candidates they consider so important—those who had "serious opposition in both primary and general elections"—appellants can find only 20 such candidates who exceeded the overall combined spending limits in all 1972 and 1974 House races.

[157] Findings IIA, ¶¶ 18-19, 40-41, IIB J.A. 442-43, 448-49.

Appellants offer a second table to prove that "'high' spending occurs in the most competitive races." *Id.* at 90-91. But the table itself shows that, even in the most hotly contested House races in 1972 and 1974 (those in which the winner received 55 percent or less of the vote), the average spending of the winners was far below the $168,000 limit. For example, according to the table in 1974 the average total expenditures by both winners ($95,544) and losers ($85,606) were each approximately one-half of the overall House spending limit ($168,000). And appellants' use of average figures has little meaning in analyzing Senate races, since the spending limit for Senate races varies with the population of each state; thus the average figure has no relation to the limit for any given state.

Appellants' third table (Br. 95) is of minimal value because the sample of candidates is so small. For example, in 1972 only 10 House challengers (out of 323) beat an incumbent. Thus the 40 percent figure—representing successful challengers in 1972 who spent in excess of the overall limit adjusted for inflation—is in reality four individuals. In 1974 almost half of the winning challengers (18 out of 40) spent less than $84,000. Only one winning challenger spent more than the $168,000 overall limit. Findings IIA, ¶¶ 3, 5, IIA J.A. 269-318, 326-86. In sum, none of appellants' tables provides the slightest support for appellants' arguments about dis-

crimination against challengers or minor party or independent candidates.

Appellants cite only one additional piece of evidence to show that the limits will prevent "effective" campaigning—Cole's conclusion that in the 1972 Senate campaigns one phone call or letter cost approximately 20 cents. Comparing that figure to the combined ceiling of 24 cents per eligible voter, appellants conclude that the "statutory limits are so low as to lack a rational basis." Appellants' Br. 92. The comparison proves nothing. No candidate, so far as we know, has ever thought that telephoning or writing every voter was an effective way to spend campaign money.[158] In 1972 and 1974, when spending was not limited and candidates to whom the money was available presumably spent what was necessary for "effective" campaigns, all but a handful of House and Senate candidates spent below the new limits. Pp. 136-37, *supra*. Their spending proves the irrelevance of appellants' 20-cent figure.

Appellants next argue (Br. 94) that because the costs of campaigning differ from state to state and among congressional districts, it was irrational for Congress to impose identical spending ceilings for all House races and identical per-voter ceilings for all Senate races.[159] They assert that Congress was obliged to adopt a tailor-made ceiling for each race to reflect the many factors that determine the relative cost of effective electioneering in different areas.

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[158] Appellants analyze McCarthy's and Nixon's spending in 1968 on the basis of money spent per vote received by them. Appellants' Br. 97. Such a comparison is of no relevance in analyzing expenditure limits expressed in terms of money spent per eligible voter.

[159] As noted above, House races in states having only one Representative are treated the same as Senate races by Section 608(c).

Such a requirement would demand impossible precision of Congress and would create dangerous opportunities for gerrymandering of the ceilings. The statute books are full of laws with numerical ceilings that apply throughout the nation—such as the personal exemption from income tax, the minimum wage, and license and filing fees. Appellants' argument would require each of these to be revised to reflect local conditions. This Court has consistently held that Congress may prescribe a general remedy for an evil that arises in various forms or degrees, where it would not be practicable or desirable to deal with each specific problem individually. *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 487-88 (1955).

The choice of ceilings is a legislative judgment entitled to judicial deference. This is particularly true where Congress, after careful deliberation, has made such a judgment on a matter uniquely within its own field of expertise. This Court has no warrant to invalidate the ceilings before they have had a chance to work, unless appellants can show that Congress' choice was manifestly unreasonable. Nothing in the record supports such a conclusion.

2. *Appellants Have Failed To Prove That the Expenditure Ceilings Will In Practice Discriminate In Favor of Incumbents and Major Party Candidates*

Appellants make the paradoxical claim that, because the spending ceilings apply equally to all candidates in any race, they will be discriminatory in their practical effect. As with contribution limits, their theory is that candidates who lack the advantages of incumbency or major party sponsorship need some way to overcome their

crimination against challengers or minor party or independent candidates.

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handicaps, and that they are constitutionally entitled to do so by outspending their opponents—and exceeding the expenditure ceilings.[160]

Appellants' argument would not make out a claim of unconstitutional discrimination even if they could show that challengers and minor party candidates had, on the average, outspent their rivals in the past as a way to overcome other disadvantages. Every evenhanded law affects some people more than others, because the circumstances of life are varied. Absent a showing that a law, equal on its face, will affect only or predominantly a single group, minor variations in the incidence of the law do not show unconstitutional discrimination. And Congress need not provide exceptions from evenhanded laws for every person or group who may labor under handicaps unrelated to the laws. *See* pp. 113-14, *supra*.

[160] Under the authority of the Act, the FEC is acting to administer the law in such a way that political activities of incumbents, such as the use of private office accounts, are treated in the same way as political activities of non-incumbent candidates. *See* FEC Notice 1975-18, 40 Fed. Reg. 32951 (Aug. 5, 1975); S. Rep. No. 409, 94th Cong., 1st Sess. 13 (1975). The Senate recently rejected two of the Commission's regulations on office accounts, but not on the ground that incumbents' advantages were reduced by the proposed regulations. The Senate concluded that equality between incumbents and non-incumbents would be better promoted by imposing identical treatment on all federal officeholders and non-officeholders, and that the proposed regulations did not adequately accomplish this end. 120 Cong. Rec. S 17872-88 (daily ed. Oct. 8, 1975); S. Rep. No. 409, *supra*, at 2-4. The Commission intends to propose a revised regulation taking into account this concern. The Washington Post, Oct. 10, 1975, at A-3, col. 1. Senator Buckley, who opposes incumbents' advantages in this lawsuit, was the deciding vote in a 48 to 47 vote to reject the proposed regulations. We assume he would not have voted against the proposed regulations if to do so served to promote incumbents' advantages.

In any event, appellants have failed to show that the ceilings will impinge any more on challengers or minor party and independent candidates than on their opponents. On the contrary, the statistics from the 1972 and 1974 elections show that challengers and minor party and independent candidates generally have been outspent in the past by incumbents and major party candidates. Thus, they will be no worse off—and in a number of cases better off—in relative terms under the ceilings than they would have been in their absence.

Incumbents have demonstrated their ability, in the absence of ceilings, to raise and spend more money than challengers. In the 1972 and 1974 House and Senate elections, with no ceilings, incumbents outspent their major party challengers by about $62.4 million to $36.5 million. Findings IIA, ¶¶ 14, 24, 37, 45, IIB J.A. 442, 444, 447-48, 449.[161] In those elections, more challengers would have been helped than hurt if the expenditure ceilings had been in effect. In all 1972 and 1974 congressional races, the ceilings would have operated to reduce the spending of 32 incumbents but only 15 challengers—and of these 15 challengers, six were outspent by their incumbent opponents. Findings IIA, ¶¶ 5, 8, 28, 47, IIA J.A. 326-86, IIB J.A. 422-31, 445, 450. Thus, only nine challengers in the approximately 700 congressional races in 1972 and 1974 involving incumbents and challengers spent more than the ceilings and also outspent their incumbent opponents. Findings IIA,

[161] In 1974, incumbents outspent their major party challengers in 21 of 22 Senate races and 252 of 323 House races. Findings IIA, ¶¶ 21, 31, IIB J.A. 443, 445. In 1972, incumbents outspent their major party challengers in 19 of 25 Senate races and 249 of 321 House races. Findings IIA, ¶¶ 43, 50, IIB J.A. 449, 450.

¶¶ 14, 24, 37, 45, IIB J.A. 442, 444, 447-48, 449. In the more numerous cases where incumbents exceeded both the ceilings and their challengers' spending, the ceilings would have benefited the challengers.[162]

Appellants say that it is in "close" races that the limits most discriminate against challengers. Appellants' Br. 98-99. To the contrary, the expenditure ceilings may help challengers when the races are close. For example, in 1974 there were nine Senate races in which the winner received less than 55 percent of the vote in the general election. Eight were won by incumbents and one by a challenger. The eight winning incumbents all substantially outspent their major party challengers, and five of the eight would have exceeded the new ceilings. Findings IIA, ¶ 33, IIB J.A. 446-47. For example, Senator Henry Bellmon in 1974 spent $622,480 compared with $195,429 spent by his challenger Ed Edmundson. The new ceiling for Oklahoma is $450,960. Bellmon received 49.4 percent of the vote compared with 48.9 percent received by Edmundson. Findings IIA, ¶ 33, IIB J.A. 446. In 1974 Representative Sam Steiger spent $203,899 as opposed to $68,203 spent by his challenger, Pat Bosch. The combined ceiling for House races is $168,000. Steiger received 51.1 percent of the vote compared with 48.9 percent received by Bosch. Findings IIA, ¶ 5, IIA J.A. 328. At the very least, these facts of record establish the failure of appellants to prove that the new ceilings will make challengers as a group worse off, relative to incumbents as a group, than they would have been if the ceilings had never been enacted.

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[162] Appellants' affiant Cole conceded this fact. Cole Deposition Tr. at 304-05.

The 1972 and 1974 results are even more striking in what they show about the relative spending power of minor party and independent candidates vis-a-vis major party candidates. Minor party and independent candidates were grossly outspent by major party candidates in the 1972 and 1974 congressional elections, when no ceilings were in effect. They were outspent by 40 to 1 in 1972 and 65 to 1 in 1974. Findings IIA, ¶¶ 12, 35, IIB J.A. 441, 447. In 1972 and 1974, only one of the 42 House candidates who exceeded the ceilings was a minor party or independent candidate, former Representative Allard Lowenstein of New York.[163] None of the 35 Senate candidates who exceeded the ceilings was a minor party or independent candidate.[164]

Considering all 1972 and 1974 races together, the new ceilings would have reduced the spending of 76 major

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[163] Lowenstein ran as a Liberal in the 1972 general election after losing in a Democratic primary and a court-ordered second primary against a Democratic incumbent. His total spending was $285,475. Of the 192 other minor party and independent House candidates in 1972, only 18 spent more than $10,000. Findings IIA, ¶¶ 40-41, IIB J.A. 448-49.

In 1974, the highest amount spent by any of the 246 minor party and independent House candidates was $85,680 by Don Elliott of New York. Elliott ran as a Liberal in the general election following his defeat in the Democratic primary by the incumbent. Of the remaining 245 minor party and independent candidates, only 15 reported spending more than $10,000. Findings IIA, ¶¶ 18-19, IIB J.A. 442-43.

[164] In 1972, the highest amount spent by any of the 40 minor party and independent Senate candidates was $394,510 by John McKeithen, an independent candidate in Louisiana. Only one other such candidate spent over $10,000. Findings IIA, ¶¶ 47-48, IIB J.A. 450.

In 1974, the highest amount spent by any of the 40 minor party and independent Senate candidates was $192,462 by Barbara A. Keating, the Conservative Party candidate in New York. Only two other such candidates spent over $20,000. Findings IIA, ¶¶ 28-29, IIB J.A. 445.

party candidates but only one minor party candidate. Clearly, minor party and independent candidates as a group will be better off in spending ability vis-a-vis major party candidates than they would have been if the ceilings had not been enacted.[165] At the very least, the contrary has not been proved.

In any event, no firm relationship has been established between outspending one's opponent and winning elections. While there were occasional instances in which a challenger outspent an incumbent and also won the election, there were other instances in which an outspending challenger lost, or in which a challenger won without outspending the incumbent. For instance, even if appellants' figures were accepted, of the five challengers who outspent an incumbent in the 1972 Senate general elections, two won and three lost. Findings IIB, ¶¶ 4-6, IIB J.A. 573-74. In 1972 and 1974 congressional races, there were a total of 57 races in which a challenger defeated an incumbent in the general election. The challenger outspent the incumbent in 34 of these races and was outspent by the incumbent in 23 of these races. Findings IIA, ¶¶ 34, 36, IIB J.A. 447. Even if the correlation between spending and winning were much closer, causation would not be shown; the correlation might indicate that money flows to likely winners,[166] or that both

[165] The 1972 presidential election shows the same pattern. Both major party candidates exceeded the new spending ceiling for presidential candidates. The eight minor party candidates and three independent candidates altogether reported spending $1,005,000—only one percent of the total spending reported by the two major party candidates. Findings IIA, ¶ 51, IIB J.A. 451. Obviously, none of the minor party or independent candidates even approached the ceiling; all will thus be better off vis-a-vis major party candidates under the new ceilings.

[166] Appellant Buckley adopts this view. Buckley Affidavit, ¶ 8.

money and votes flow to candidates with other traits that win elections.[167]

Appellants seek to avoid the force of these statistics by focusing on selected individual races and proffering hypothetical and unsubstantiated theories. They argue that there is a "floor" of spending that a challenger must reach "to be 'viable,' to obtain the voter recognition that permits a campaign to attract votes." Appellants' Br. 97. If any such "floor" exists, appellants have not shown that the ceilings will prevent candidates from reaching it. Of the seven challengers who beat Senate incumbents in the 1972 and 1974 general elections, only one spent more than the new ceiling of 24 cents per eligible voter. Findings IIA, ¶¶ 30, 47, IIB J.A. 445, 450. In the five 1972 Senate races appellants characterize as "high-spending" (Br. 96), three of the victorious challengers spent (with an inflation adjustment) less than $300,000—the lowest combined ceiling for the Senate in any state—and another exceeded it by less than $10,000. Findings IIA, ¶ 4, IIA J.A. 319-25. These results suggest that the ceilings will not prevent Senate candidates from reaching the "floor," if any floor exists.

The statistics on House elections point the same way. Of the 50 challengers who beat House incumbents in the 1972 and 1974 general elections, only two spent more than the new ceiling of $168,000. Findings IIA, ¶¶ 20, 21, 42, 43, IIB J.A. 443, 449. Challengers in 1974 House races defeated incumbents while spending as little as $15,846 (David Evans), $33,064 (Gary Myers), $36,227

[167] *See* Affidavit of John J. McGowan, Ex. 3 to Response of Defendants and Intervening Defendants to Plaintiffs' Proposed Findings of Fact, ¶ 6c-e; Findings I, ¶ 4, IIA J.A. 5-6; Appendix A at 1a-2a.

(Pattison), $44,423 (Downey), $42,271 (Weaver), $44,-920 (Lloyd), and $47,336 (Jacobs). *Id.*, ¶ 5, IIA J.A. 327-86. In five of these seven races, the challengers faced contested primaries before the general election. House candidates also won open races not involving an incumbent in 1974 while spending as little as $14,841 (Nowak), $20,583 (Beard), $29,398 (Hall), $29,965 (Schulze), $38,819 (Edgar), $42,944 (Goodling). Five of these six winners had contested primaries. *Id.*

Appellants hypothesize a comparative "marginal utility of initial spending" theory to support their paradoxical claim that incumbents are favored over challengers by any ceilings that apply equally to both. Appellants' Br. 97-98. They assert that, because challengers often start as relative unknowns, they get more impact than incumbents do from their initial campaign spending, until they "obtain the voter recognition that enables a campaign to attract votes." *Id.* at 97.

Even if it were sound, the theory would not impugn these ceilings. It would support only an argument that the ceilings should be high enough to permit challengers to reach a hypothetical "floor"—which, as we have shown, these ceilings clearly do. But the theory is not sound, because it disregards incumbents' unquestioned ability to raise and spend more money. The net result would vary with the circumstances of each case—which renders the theory useless in proving discrimination between groups.

In sum, appellants' contention that the expenditure ceilings will favor incumbents rests on inconclusive data and unsupported hypotheses. As the court of appeals concluded:

> "Plaintiffs contend that only by immense expenditures can an unknown candidate compete. This may be correct for some candidates, in some situations. But it also is true that at other times a newcomer has achieved political momentum without large contributions. In a broad sense, the statute may favor relative newcomers, by limiting the access of incumbents to large donations." Ct. App. Op. 1541.

Such a state of proof does not rise to the dignity of an unconstitutional discrimination. Professor Freund's analysis is apposite:

> "Turning to a limit on expenditures, the claim is made that a candidate should have the liberty to attract all the material support he can and allocate it as he deems best. . . .
>
> "Much is argued about the favor that would be bestowed upon a competitor as against an incumbent. It seems to me very problematic which would be helped, and in that event there is no serious problem. The incumbent may be helped by a limitation on expenditures since he is better known and needs less exposure. On the other hand, a limit on expenditures may encourage entry into the field by competitors, and in that situation you have a standoff, certainly not so clearly a situation of favoritism bestowed by law as would call for the invocation of a constitutional prohibition." [168]

3. *Appellants Have Failed To Prove That the Expenditure Ceilings Discriminate Against Independents or Single-State Political Parties*

Appellant McCarthy makes a further argument: that these statutes discriminate against independents by per-

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[168] Freund, *supra* note 31, at 73.

mitting national or state party committees to spend additional amounts not charged against a candidate's ceiling (18 U.S.C. § 608(b))—a provision from which only a party-sponsored candidate can benefit. Appellant Conservative Party of New York also complains that since it does not have a national committee it cannot gain the advantage of the expenditures allowed national committees. Appellants' Br. 104-06. Again, appellants' grievances are aimed at the facts of political life and not at any aspect of the challenged statutes.

A candidate nominated by a party—major or minor—obtains advantages but also bears extra burdens. He obtains the party's support, financial and otherwise, but loses some of his freedom to stake out his own positions and usually obliges himself to support the party's other candidates. In short, "the political party and the independent candidate approaches to political activity are entirely different. . . ." *Storer* v. *Brown*, 415 U.S. 724, 745 (1974). Appellant McCarthy readily admits that the group supporting his candidacy, appellant Committee for a Constitutional Presidency—McCarthy '76, chose not to organize as a political party in order to dramatize the differences between party-nominated and independent candidates; he considers his independent status an "important asset" in his "appeal." [169] Appellant Conservative Party has chosen to confine its activities to one state.

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[169] Appellants' Br. 105; *see* McCarthy Deposition Tr. at 66-67; Monroe Affidavit, ¶ 7.

McCarthy nevertheless qualifies as the candidate of a "party" for purposes of receiving public financing for his candidacy. *See* p. 224, *infra*.

By permitting a party committee to spend money to support its candidates, the challenged statutes merely allow parties to continue to perform one of their traditional functions. To provide otherwise would be to outlaw, in part, "the political party . . . [approach] to political activity." Instead, the statutes leave to each candidate the decision whether to seek a party nomination, and to each party the decision to organize as it chooses. Appellant McCarthy, who has sought and received party nominations in the past, is free to seek them in the future if he decides that the benefits outweigh the disadvantages. Appellant Conservative Party can expand geographically if it chooses.

Appellant McCarthy also complains that the expenditure ceiling harms him because it "prevents independent candidates from spending as much as party-sponsored candidates," apparently with reference to the prenomination period, while he is gaining access to the ballot as an independent.[170] We believe that appellants have misread the challenged legislation. The legislative history makes it clear that McCarthy, as an independent, will be allowed to spend $10 million (plus the fund-raising allowance) during the period before the primary elections of the major parties. *See* Appendix A at 3a-4a. And in a virtually indistinguishable case, the FEC has already ruled that a party candidate can spend up to the primary election ceiling even if he is unopposed in the primary.[171]

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[170] Appellants' Br. 104. *See* McCarthy Affidavit, ¶ 17; Monroe Affidavit, ¶ 12; McCarthy Deposition Tr. at 86-88.

[171] FEC AO 1975-9, 40 Fed. Reg. 36242 (Aug. 19, 1975). In any case, particularly since the specific issue presented by McCarthy is presently before the FEC in the posture of a request for an advisory opinion, AOR 1975-53, 40 Fed. Reg. 40678-79 (Sept. 3, 1975), we believe a ruling by this Court would be premature.

In summary, the recent election statistics do not support appellants' claims of unconstitutional discrimination. Nothing else in the record does so. In their attack on the face of the statutes before the laws have operated in even one regular election year, appellants are obligated to present convincing evidence that the statutes will inevitably have the effects they allege. They have presented no such evidence, and their claims of discrimination fail utterly for lack of proof.

C. The Independent Expenditure Limit Is a Reasonable Means To Prevent Evasion of Giving and Spending Limits

Section 608(b) limits to $1,000 the contributions a person may make to a candidate in a federal election. Section 608(e) imposes an identical limit on any expenditure by a person "relative to a clearly identified candidate during a calendar year . . . advocating the election or defeat of such candidate." The statute narrowly defines the words "clearly identified." 18 U.S.C. § 608(e)(2)(A).

Thus, in an election for federal office, an individual may give up to $1,000 to any candidate and may also make "independent expenditures" up to the same limit to promote the candidate's cause or to defeat his opponent. In addition, he may incur entertainment or travel expenses to the same end, the first $500 of each of which are not treated as an "expenditure." 18 U.S.C. § 591(f).

As the court of appeals recognized, the limit on independent expenditures is necessary to eliminate an obvious means of evading the limit on contributions. Ct. App. Op. 1530. Congress was concerned that wealthy individuals might spend vast sums of money for satellite

campaigns, formally unconnected to a candidate's campaign but supportive of it all the same:

> "[S]uch controls are imperative if Congress is to enact meaningful limits on direct contributions. Otherwise, wealthy individuals limited to a [$1,000] direct contribution could also purchase one hundred thousand dollars' worth of advertisements for a favored candidate. Such a loophole would render direct contribution limits virtually meaningless." [172]

Obviously, such spending would also frustrate the limits on expenditures by candidates.

This congressional concern finds ample basis in the history of evasion of prior campaign finance laws. Giving and spending limits are not new to the 1974 legislation. They have been on federal statute books since 1940. Amendments to the Hatch Act in that year imposed a $5,000 limit on contributions to any interstate campaign committee and a $3 million ceiling on the receipts and expenditures of such a committee.[173] Both of those limits were ingeniously evaded and became dead letters. The 1940 law was read by political fund-raisers and their counsel as merely limiting contributions to a single committee, and as containing nothing to prevent multiple gifts to multiple committees even when the multiple com-

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[172] S. Rep. No. 689, *supra* note 35, at 71. This is a judgment that Congress has repeatedly and consistently emphasized. *See* H.R. Rep. No. 1239, *supra* note 56, at 6-7, 17, 51; S. Rep. No. 310, 93d Cong., 1st Sess. 12-13, 43 (1973); S. Rep. No. 1237, 93d Cong., 2d Sess. 4, 56-57 (1974) (Conference Report); H.R. Rep. No. 1438, 93d Cong., 2d Sess. 4, 56-57 (1974) (Conference Report); 119 Cong. Rec. S 14636, 14857-58 (1973) (consideration of provision comparable to § 608(e) in earlier version of Senate bill).

[173] Act of July, 1940, 54 Stat. 767-72, enacting Hatch Act §§ 13, 20.

mittees were under common control.[174] Also, it was read as inapplicable to committees operating within a single state. Campaign solicitors and contributors showed no reluctance to exploit these loopholes, proving the statute to be, in President Johnson's phrase, "more loophole than law." *See* Ct. App. Op. 1530.

An even more direct antecedent exists in the history of Section 610, which until 1947 prohibited only corporate and union "contributions." That word was construed to include only direct gifts or payments to—not expenditures independent of—a candidate's formal campaign. The result was massive evasion, as the district court found. Findings I, ¶ 136, IIA J.A. 190. The experience is recounted in detail in Mr. Justice Frankfurter's opinion for the Court in *United States* v. *UAW*, 352 U.S. 567, 570-84 (1957).

After the 1944 elections, Congress investigated the evasion of Section 610 and concluded that the term "contribution" had been wrongly interpreted to exclude expenditures. H.R. Rep. No. 2739, 79th Cong., 2d Sess. 40, 46 (1946). It amended the statute in Section 304 of the Taft-Hartley Act to correct the error. Senator Taft explained the purpose of the amendment:

> "[T]he words of [Section 610] have been somewhat changed in effect so as to plug up a loophole which obviously developed, and which, if the courts had permitted advantage to be taken of it, as a matter of fact, would absolutely have destroyed the prohibition against political advertising by corporations. If

[174] This reading may have been incorrect, *see Common Cause* v. *Democratic Nat'l Comm.*, 333 F. Supp. 803 (D.D.C. 1971); *Common Cause* v. *Finance Comm. to Re-Elect the President*, Civil No. 1780-72 (D.D.C. 1973), but it was never challenged by the Department of Justice.

> 'contribution' does not mean 'expenditure,' then a candidate for office could have his corporation friends publish an advertisement for him in the newspapers every day for a month before election. I do not think the law contemplated such a thing, but it was claimed that it did, at least when it applied to labor organizations." 93 Cong. Rec. 6439 (1947).

This Court has recognized the force of that logic. It has said that "it was obvious that the statute as construed [before 1947] could easily be circumvented through indirect contributions." *United States* v. *CIO*, 335 U.S. 106, 115 (1948). *See also United States* v. *UAW*, *supra*. The Court construed Section 610, as amended, to leave corporations and unions free to spend money to communicate with their stockholders and members. *United States* v. *CIO*, 335 U.S. at 121-24. However, it has never cast doubt on either the need for or the constitutionality of prohibiting other corporate and union expenditures designed to influence federal elections. *See Pipefitters Union* v. *United States*, 407 U.S. 385 (1972).

The independent expenditure limit in Section 608 is not a total prohibition but a ceiling permitting expenditures up to $1,000 per candidate; and it limits only the spending of money, leaving individuals free to express their views in any forum at any time.[175] Moreover, independent expenditures for or against candidates are not a traditional means of political expression; their

[175] *Compare Civil Service Comm'n* v. *Letter Carriers*, 413 U.S. 548, 576-77 (1973). *See* Findings I, ¶ 5 IIA J.A. 6-8, for a list of activities that the district court found available to a citizen wishing to participate in and affect the political process; the vast majority of these activities involve little or no expenditure of money.

amount has been almost negligible.[176] As the history of Section 610 reveals, if such expenditures increase, the increase will almost certainly be because they offer a means to circumvent the other limits.

In writing Section 608(e), Congress conscientiously followed the guidance furnished by the courts in invalidating an earlier provision aimed at the circumvention problem. Title I of the FECA as enacted in 1971 imposed limits on spending in the communications media by candidates for federal office. In order to prevent evasion of those limits through "independent" media expenditures in favor of candidates, the Act forbade a newspaper or broadcast station to publish any paid advertisement for or against a candidate unless the candidate certified in writing that the expense would not cause him to exceed his statutory limit.[177] The effect was to charge every "independent expenditure" against

[176] Only 21 individuals reported independent expenditures with respect to the 1972 presidential election, totaling $98,060. Only 13 individuals and one group reported independent expenditures with respect to the 1974 congressional elections, totaling $15,802. Findings IIA, ¶¶ 112, 113, IIB J.A. 472. (Section 305 of the FECA required reporting of independent expenditures over $100.) These figures compare with total spending of $94 million by candidates who ran in the 1972 presidential general election and $74 million by candidates who ran in the 1974 congressional general elections. Findings IIA, ¶¶ 11, 51, IIB J.A. 441, 451.

Reports filed by Appellant Mott in 1972 indicate that he made expenditures totaling $53,370.75. The reports indicate that at most one-third represented expenditures made to publicize his views about a clearly identified candidate. Those payments were made to a New York advertising agency. It is not clear whether they were made independently of the candidate he supported. *See* Findings III, Mott ¶ 15, IIB J.A. 724. In 1974, Mr. Mott reported $10,350 in expenditures. Of that amount, only $177 was spent for public dissemination of Mr. Mott's views—the typing of fund-raising letters for one Senate candidate.

[177] *See* Federal Election Campaign Act of 1971, Pub. L. 92-225, 86 Stat. 3, § 104(b), (c), repealed by Pub. L. 93-443, 88 Stat. 1278, § 205(b).

the candidate's ceiling, and to give the candidate a virtual veto power over everything said in his favor or against his opponent in a paid advertisement. Furthermore, the scheme was enforceable by penalties *against the communications media* for unauthorized publications.

That enforcement scheme was held by a three-judge district court to be an unconstitutional prior restraint on the press. *ACLU, Inc.* v. *Jennings*, 366 F. Supp. 1041 (D.D.C. 1973), *dismissed as moot*, 43 U.S.L.W. 5043 (1975). The district court observed that the candidate expenditure ceilings themselves were "presumably valid," *id.* at 1050, and that Title I's "constitutional infirmities —its prior restraints and criminal sanctions directed to the press—[are] inherent in the enforcement structure that it creates." *Id.* at 1054. The Court also noted that "[t]he aims of the Act [are] clearly of prime national concern." *Id.* Congress responded by repealing Title I and substituting the contribution and independent expenditure limits here under review.[178]

The present law is free of its predecessor's flaws. An individual may contribute directly to a candidate, incur independent expenses in the candidate's support, or both. In each case, he is subject only to a statutory maximum amount. No candidate has control over what may be said about him or his opponent by others, and no restrictions or prohibitions run against the communications media. Congress has seen the defects of its previous approach and manifestly found a better way, guided by

[178] In 1973, the Senate passed a bill requiring candidate approval of all independent expenditures (over $1,000) in the same manner that the 1971 law required approval of media expenditures. *See* 119 Cong. Rec. S 26481-87 (1973); *id.* S 26594-622 (1973). The *Jennings* decision intervened and in the next session Congress changed its approach by passing the challenged statutes.

the decision in *Jennings*. *See* S. Rep. No. 689, *supra* note 35, at 18-19.[179]

As the court of appeals stressed,[180] Section 608(e) is carefully delimited to cover only expenditures that would be direct evasions of the contribution limits. Only expenditures "advocating the election or defeat" of a "clearly identified candidate" are subject to the monetary limit. "Clearly identified" is explicitly and narrowly defined. 18 U.S.C. § 608(e)(2)(A). Funds spent to propagate one's views on issues without expressly calling for a candidate's election or defeat are thus not covered.

The boundaries of Section 608(e) are not so vague that groups and individuals will have to guess as to the statute's reach. Nor is the likelihood of discriminatory enforcement which appellants foresee (Br. 114-15) more than speculation. In determining the scope of permissible federal regulation, the courts have had no trouble distinguishing between discussions of general political issues and partisan electoral campaigning. *See, e.g., ACLU, Inc.* v. *Jennings, supra; United States* v. *National Committee for Impeachment*, 469 F.2d 1135 (2d Cir. 1972); *United States* v. *CIO*, 335 U.S. 106 (1948); *Pipefitters Union* v. *United States*, 407 U.S. 385 (1972); *Civil Service Commission* v. *Letter Carriers*, 413 U.S. 548 (1973).

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[179] Appellants quote Professor Bickel as saying that a provision such as Section 608(e) is "flatly unconstitutional." Appellants' Br. 112. Professor Bickel said no such thing. The quoted remark refers to a provision, like old Title I of the FECA, designed "to put the candidate in control, make him accountable for, and allow him to control, the expenditures that are made in his behalf." Bickel, *supra* note 31, at 65-66. Professor Bickel went on to say that a law limiting contributions would be "both wise and lawful," but did not express any view on an independent expenditure limit such as Section 608(e). *Id.*

[180] Ct. App. Op. 1530-31.

Other sections of the challenged statutes further help to avoid any problem of vagueness or overbreadth in Section 608(e).[181] If any such problems nevertheless arise, the FEC can eliminate them by rule or advisory opinion. 2 U.S.C. §§ 437d, 437f.[182]

Much of appellants' criticism relates to the fact that the $1,000 limit would not permit a person to buy a quarter-page ad in The New York Times or The Washington Post urging a candidate's election. They suggest that the most difficult constitutional questions would arise if the section were applied to advertisements containing the purchaser's own speech. Appellants' Br. 107. Of course, an individual could buy an ad costing $10,000 if it promoted 10 or more candidates. H.R. Rep. No. 1239, *supra* note 56, at 7. It is also possible that a number of persons who do not otherwise act in concert for political purposes could pool their independent expenditures on a single occasion to buy an advertisement, without becoming a "group" or "political committee" subject to a single $1,000 limit. The FEC has so suggested in its recent proposed disclosure regulations.[183]

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[181] For example, "expenditure" excludes "any news story, commentary, or editorial" distributed through the media, "nonpartisan activity designed to encourage individuals to register to vote or to vote," and any communication by a membership organization or corporation to its members or stockholders. 18 U.S.C. § 591(f)(4)(A), (B), (C).

[182] The FEC's pending rulemaking proceeding will address, *inter alia*, questions as to "the scope of activities covered" by Section 608(e). 40 Fed. Reg. 23888, Item II-E (June 2, 1975).

[183] "The term 'political committee' does not include a group of individuals who act in concert for the purpose of making a single expenditure in a single transaction so long as the funds expended are the personal funds of the individuals concerned, the transaction does not involve any ongoing solicitation effort, the members do not continue to act in concert for the purpose of influencing a Federal election subsequent to the completion

But the Court need not decide such hypothetical questions now. There will be time to consider them if they are ever presented in a specific factual situation. The Court should uphold the constitutionality of Section 608 (e) on its face for the above reasons and for the addition reasons eloquently stated in the Brief for *Amici Curiae* Senators Scott and Kennedy at 54-63.

VI. APPELLANTS HAVE FAILED TO PROVE THAT THE CHALLENGED DISCLOSURE PROVISIONS UNCONSTITUTIONALLY RESTRICT THEIR RIGHTS OF FREE SPEECH, ASSOCIATION, OR PRIVACY

Appellants concede that Congress may constitutionally require disclosure of campaign contributions and expenditures, at least in certain circumstances. Appellants' Br. 170-71.[184] Indeed, appellants urge the Court to rule that disclosure laws satisfactory to them are not only a panacea for all abuses that plague campaign finance, but virtually the sole remedy Congress can constitutionally prescribe. *Id.* Appellants, however, ask the Court to invalidate these disclosure provisions because of the particular monetary thresholds chosen by Congress,[185] and because these thresholds apply to minor party and independent candidates.

In our view, the challenged disclosure provisions serve compelling governmental interests and are not unconstitutionally overbroad in their application.

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of the transaction, and the expenditure is not authorized by any candidate." FEC Notice 1975-51, § 100.14, 40 Fed. Reg. 44700-01 (Sept. 29, 1975).

[184] Appellants apparently do not challenge the requirement that political committees keep records of and report certain of their expenditures. 2 U.S.C. §§ 432(c)(3)-(4), 434(b)(9)-(11).

[185] Appellants apparently prefer a threshold of $397. Appellants' Br. 185.

A. Disclosure Serves a Compelling Public Need and Promotes First Amendment Values

1. *Disclosure Deters Political Corruption and Reduces the Appearance of Such Corruption*

Congress was aware that pernicious abuses associated with campaign financing have plagued the electoral process. Corruption of public officers—and the appearance of such corruption—have seriously weakened public confidence in the integrity of the Government. There can be little doubt that Congress and the district court correctly concluded that secrecy in campaign contributions and expenditures fosters these abuses. Findings I, ¶ 135, IIA J.A. 190.

The following testimony before the Senate about the execution of an illegal corporate contribution depicts the predilection for secrecy:

> "Mr. Dash. Were you told anything concerning whether or not that date, April 6, was relevant, why the contribution had to be made then?
>
> "Mr. Clark [of American Shipbuilding Corporation]. Yes; the intent of writing the check on April 6 was because of the disclosure law going into effect on April 7.
>
> "Mr. Dash. So that having given the contribution on April 6 would mean that it did not have to be disclosed?
>
> "Mr. Clark. Yes." [186]

An official of Ashland Oil gave similar testimony concerning his company's illegal $100,000 corporate contribution:

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[186] *Hearings Before the Senate Select Comm., supra* note 41, at 5405. On April 5 and 6, 1972, the Finance Committee to Re-elect the President received contributions of more than $5.2 million. Affidavit of John J. Conway, *supra* note 44, ¶ 29.

"Mr. Hamilton. Did Mr. Stans suggest to you that the money be contributed before the 7th day of April 1972?

"Mr. Atkins. Yes, sir.

"Mr. Hamilton. And what was the reason for that suggestion that Mr. Stans gave you?

"Mr. Atkins. Contributions prior to that date were supposed to be secret and not disclosed.

"Mr. Hamilton. Whose anonymity was Mr. Stans attempting to protect?

"Mr. Atkins. Well, again I am not sure whose anonymity Mr. Stans was attempting to protect, I was interested in protecting my company and myself." [187]

Furthermore, the district court has found that persons who contribute, solicit, receive, and expend campaign contributions with improper motives have preferred to do so secretly; that a substantial percentage of the illegal corporate campaign contributions described in Part III, *supra*, were made prior to April 7, 1972, the effective date of the disclosure provisions of the FECA in 1971; and that a substantial number of the largest contributions from individuals as well as organizations were made prior to April 7.[188]

Secrecy encourages impropriety not only in the raising of campaign contributions, but also in campaign spending. Donors wishing to conceal their identity often make their contributions in cash. The Senate Select Committee

[187] *Hearings Before the Senate Select Comm., supra* note 41, at 5441; *see id.* at 5336, 5448.

[188] Findings I, ¶¶ 126, 127, 146, IIA J.A. 156, 203; *see id.* I, ¶ 14, IIA J.A. 203-05; *id.* IIA, ¶ 119, IIA J.A. 508; *Final Report, supra* note 38, at 445.

on Presidential Campaign Activities found that the "Watergate break-in" and certain campaign "dirty tricks" undertaken by Donald Segretti were funded entirely by such secret campaign contributions.[189] Only secret campaign contributions were used to finance the "Watergate coverup conspiracy." [190] A secret $5,000 contribution to the Nixon campaign was diverted by a member of the White House staff to pay for the illegal entry into the offices of Daniel Ellsberg's psychiatrist.[191] Fifty thousand dollars in secret cash contributions were used falsely and illegally to inflate the proceeds of a campaign dinner.[192]

In view of the nexus between secrecy and campaign corruption, the congressional conclusion that disclosure is a reasonable means of achieving reform can hardly be assailed. In the famous phrase of Mr. Justice Brandeis,

> "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman." Other People's Money 92 (1914).

Campaign contribution disclosure laws are hardly new. This Court has long since upheld them:

> "Congress reached the conclusion that public disclosure of political contributions, together with the names of contributors and other details, would tend

[189] *Hearings Before the Senate Select Comm., supra* note 41, at 538-39, 573-74, 699-701, 757-59, 761, 2094; *Final Report, supra* note 38, at 25-26, 161; Findings I, ¶ 128, IIA J.A. 508.

[190] *Hearings Before the Senate Select Comm., supra* note 41, at 546-48, 702-03, 712-13, 717, 767-68, 2095-96, 2100, 2108-09, 2295-97.

[191] *Final Report, supra* note 38, at 694-99.

[192] *Hearings Before the Senate Select Comm., supra* note 41, at 757.

to prevent the corrupt use of money to affect elections. The verity of this conclusion reasonably cannot be denied." *Burroughs* v. *United States*, 290 U.S. 534, 548 (1934).

Disclosure has many beneficial effects. As the district court found, disclosure will deter illegal contributions and other contributions considered corrupt by the community. Findings I, ¶¶ 125, 135, IIA J.A. 156, 190.[193] Public officials will shrink from affording special benefits to campaign contributors where the electorate knows or has the means of obtaining information about the contributor's largesse. Disclosure also helps in enforcing related laws frequently violated during the conduct of political campaigns. As the district court found, discovery of the persons responsible for the Watergate break-in was facilitated by tracing the campaign contributions used to finance the operation. Findings I, ¶ 128, IIA J.A. 156; *see* Ct. App. Op. 1544-45. Judicially compelled disclosure of previously secret lists of pre-April 7, 1972 campaign contributions enormously facilitated the investigations of the Watergate Special Prosecution Force and resulted in a large number of guilty pleas and convictions for making and seeking illegal contributions. Watergate Special Prosecution Force Report 71-72 (Oct., 1975). The record-keeping and disclosure provisions are also essential to the enforcement of many other parts of the challenged statutes. It would be impossible to determine whether committees, candidates, and contributors were adhering to other provisions of these statutes without the requirement that records of certain receipts and expenditures be maintained and reported periodically.

[193] Disclosure alone, however, is not sufficient to achieve these results. *See* pp. 103-05, *supra*.

2. *Disclosure Promotes First Amendment Values by Informing the Electorate*

The periodic pre-election reporting of campaign contributions and expenditures prescribed by these laws assists voters to make informed assessments of candidates *before* they vote. Thus, as the district court found, disclosure of the sources of campaign contributions improves some voters' ability to evaluate the candidates. Findings I, ¶ 134, IIA J.A. 190. By improving the flow of information to the electorate, disclosure provisions facilitate the intelligent exercise of the foremost among constitutional freedoms—the right to vote—and thereby promote one of the central purposes of the First Amendment.[194] More broadly, informed public opinion is a precondition to effective citizen participation in and control of government. As Mr. Justice Stewart has observed, "an informed and critical public opinion . . . alone can . . . protect the values of democratic government."[195] The dissemination of campaign finance information—which is indisputably relevant to the conduct of public affairs—thus nourishes the cardinal First Amendment goal of "producing an informed public capable of conducting its own affairs." *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 392 (1969). Hence, disclosure sustains active, alert, and responsible citizenship. *See United States* v. *UAW*, 352 U.S. 567, 575 (1957).

This Court has recognized the informational value of exposing to public scrutiny the expenditures of political advocates. It has upheld against First Amendment at-

[194] Brennan, *The Meiklejohn Interpretation of the First Amendment*, 79 Harv. L. Rev. 1, 13 (1965); *see* Ct. App. Op. 1544-45.

[195] *New York Times Co.* v. *United States*, 403 U.S. 713, 728 (1971) (concurring opinion); *see* T. Emerson, Toward a General Theory of the First Amendment 7-8 (1966).

tack a disclosure statute much like the FECA—the Federal Regulation of Lobbying Act. *United States* v. *Harriss*, 347 U.S. 612 (1954). The Court reasoned that the American ideal of government by elected representatives depends on the representatives' ability to evaluate competing choices, and that information about the employers of lobbyists helps Congress properly evaluate the positions they advance. *Id.* at 625. The American ideal of government no less depends on the electorate's ability to evaluate candidates who seek to represent them, and such information is no less valuable in helping the public make its choices. *See Burroughs, supra.*

3. *Disclosure Promotes First Amendment Values by Assisting the Press to Perform Its Constitutional Role*

The disclosure requirements assist the press in performing its vital First Amendment functions—the "organized, expert scrutiny of government," and the dissemination of information to the public about its government.[196] The press plays an indispensable role in fostering the flow of information critical to maintaining an informed public. "[N]ewspapers . . . have shed and continue to shed, more light on the public . . . affairs of the nation than any other instrumentality of publicity. . . ." *Grosjean* v. *American Press Co.*, 297 U.S. 233, 250 (1936). In particular, the press plays a crucial and unique role in exposing government misconduct. As Mr. Justice Black has said, "Only a free and unrestrained press can effectively expose deception in government." [197]

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[196] "Or of the Press," Address of Potter Stewart, *supra* p. 93.

[197] *New York Times Co.* v. *United States*, 403 U.S. 713, 717 (1971) (concurring opinion).

The press has applied its "expert scrutiny" to campaign finance disclosure reports with salutary results. The Secretary of State of Florida has said about the Florida disclosure statute:

> "I do not wish to exaggerate, but I frequently had to shove reporters out of the way before I could get the papers [campaign treasurer's pre-election report] filed . . . because they [the reporters] would grab them. . . ." [198]

B. Even If the Disclosure Provisions Had Some Incidental Effect on First Amendment Rights, They Would Nevertheless Be a Constitutional Exercise of Congress' Power To Regulate in This Area

We fully recognize the scope of First Amendment protection of freedom of association for the advancement of beliefs and ideas. We do not gainsay that, at least in theory, the requirement of public disclosure of associations may dampen an individual's freedom to associate and to express his views through organizational ties.

However, as discussed more fully in Part IV, *supra*, this Court has recognized that a process of constitutional accommodation is necessary and appropriate where—as here—countervailing interests compete with First Amendment values. The need for accommodation is acutely present here because important First Amendment values lie on both sides of the issue.

Judicial decisions involving similar laws have uniformly upheld their constitutionality. In *Burroughs* v. *United States*, 290 U.S. 534 (1934), this Court upheld in sweeping terms the similar disclosure provisions of

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[198] Roady, *Ten Years of Florida's "Who Gave It—Who Got It" Law*, 27 Law & Contemp. Prob. 434, 438-39 (1962).

the Federal Corrupt Practices Act of 1925. The Court in *Burroughs* did not have occasion to address First Amendment questions. The Court's reasoning, however, foreshadowed First Amendment analysis, for the Court first identified the compelling public need for the legislation and then concluded that disclosure was an appropriate means of achieving that end. *See Stoner* v. *Fortson*, 379 F. Supp. 704, 713-14 (N.D. Ga. 1974) (three-judge court). In any case, *Burroughs* at the very least forecloses further dispute about the need for and utility of legislation requiring the disclosure of campaign financing data. *Pichler* v. *Jennings*, 347 F. Supp. 1061, 1068 (S.D.N.Y. 1972).

When the Court upheld the Federal Regulation of Lobbying Act against First Amendment attack in *United States* v. *Harriss*, 347 U.S. 612 (1954), it relied on and approved *Burroughs*:

> "Toward that end, Congress has . . . merely provided for a modicum of information from those who for hire attempt to influence legislation or who collect or spend funds for that purpose. It wants only to know who is being hired, who is putting up the money, and how much. It acted in the same spirit and for a similar purpose in passing the Federal Corrupt Practices Act—to maintain the integrity of a basic governmental process." *Id.* at 625.[199]

In *Harriss*, the Court rejected the argument that disclosure will deter political activity, in terms equally applicable to appellants' contentions in this case:

[199] *See Communist Party* v. *Subversive Activities Control Bd.*, 367 U.S. 1, 97-99 (1961); *id.* at 173-74 (Douglas J., dissenting: "Criminal sanctions for failure to report and to disclose all contributions made to political parties are permitted," *citing Burroughs*).

> "But, even assuming some such deterrent effect, the restraint is at most an indirect one resulting from self-censorship, comparable in many ways to the restraint resulting from criminal libel laws. The hazard of such restraint is too remote to require striking down a statute which on its face is otherwise plainly within the area of congressional power and is designed to safeguard a vital national interest." *Id.* at 626 (footnote omitted).[200]

The lower courts have consistently upheld the constitutionality of campaign finance disclosure statutes. Ct. App. Op. 1541-49; *United States* v. *Finance Committee to Re-Elect the President*, 507 F.2d 1194, 1200 (D.C. Cir. 1974) (upholding the similar original FECA disclosure provisions: "We reject the attack on this statute on First Amendment grounds on the present record—in the context of *Burroughs & Cannon* and *Harriss*, and in the absence of a foundation in fact, as contrasted with speculation"); *Stoner* v. *Fortson*, 379 F. Supp. 704, 713 (N.D. Ga. 1974) (three-judge court) (upholding Georgia disclosure statute: "This court has no doubt that the disclosures sought bear a substantial connection to preventing corruption in politics, to preventing influence buying, to preventing favoritism in dealings with the state, to preventing the buying of appointments and positions; in short, to preserving the democratic system and ensuring fair elections"); *see Pichler* v. *Jennings*, *supra*.

[200] This Court has sustained a variety of other disclosure requirements against First Amendment attacks. In *Lewis Publishing Co.* v. *Morgan*, 229 U.S. 288 (1913), it upheld a statute requiring newspapers using the mails to publish certain information about their management and ownership. In *Viereck* v. *United States*, 318 U.S. 236 (1943), the disclosure provisions of the Foreign Agents Registration Act withstood attack. *See also id.* at 251 (Black, J., dissenting); *Communist Party* v. *Subversive Activities Control Bd.*, *supra* note 199; *New York ex rel. Bryant* v. *Zimmerman*, 278 U.S. 63 (1928).

These cases would establish the facial validity of the challenged disclosure provisions even if appellants had shown some modicum of harassment or "chilling effect." On the present record they are conclusive, for appellants have utterly failed to establish a factual foundation for their claim of "chilling effect." Ct. App. Op. 1546. In this Court, instead of urging the same factual claims rejected below, appellants now offer only "clearly articulated fears"—carefully phrased in the subjunctive—as to the effect the statute "can," "would," or "might" have. Appellants' Br. 172-73, 178.

Appellants seek to justify their failure of proof by stressing the evanescent quality of evidence of harassment or deterrence. By so doing, they ask in effect for a rule of *per se* unconstitutionality wherever disclosure of association is required. Adoption of any such *per se* rule would radically conflict with this Court's wise and cautious development of the law on disclosure, *Burroughs, supra; NAACP* v. *Alabama*, 357 U.S. 449 (1958), and with First Amendment doctrine in general, *see e.g., Near* v. *Minnesota*, 283 U.S. 697 (1931); *Brandenburg* v. *Ohio*, 395 U.S. 444 (1969).

On the present record, *NAACP* v. *Alabama, supra*, and related cases are inapposite.[201] In *NAACP*, there was a proven threat of direct and immediate retaliation.[202] As the court of appeals said:

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[201] *See Stoner, supra; United States* v. *Finance Comm., supra; Cox, supra* note 31, at 69; *Freund, supra* note 31, at 74.

[202] *NAACP* v. *Alabama*, 357 U.S. at 462: "Petitioner has made an *uncontroverted showing* that on past occasions revelation of the identity of its rank-and-file members has exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility." (emphasis added); *Bates* v. *City of Little Rock*, 361 U.S. 516 (1960); *see Talley* v. *California*, 362 U.S. 60 (1963).

Similarly inapposite are those cases (1) where the state had advanced no compelling interest for the required disclosure: *Gibson* v. *Florida Legislative Comm.*, 372 U.S. 539, 557 (1963); *NAACP* v. *Button*, 371 U.S. 415, 444 (1963); *Talley* v. *California*, 362 U.S. at 63; or (2) where there was no rational nexus between achievement of the state's interest and disclosure of the information: *Bates* v. *City of Little Rock*, 361 U.S. at 525; *Shelton* v. *Tucker*, 364 U.S. 479 (1960). These problems neither inhere in nor result from the challenged disclosure provisions.

> "It may well be that a party (or candidate) can demonstrate such harassment to itself or to its supporters as to underpin a ruling that disclosure in particular circumstances cannot constitutionally be required. *Compare NAACP* v. *Alabama* .... Whether the Commission through its regulations or its advisory opinions can appropriately address this situation is a question we do not decide in the absence of concrete facts. In any event, courts sit to act in such cases when presented with a proper record." Ct. App. Op. 1548.

We accept Judge Bazelon's statement below that "[t]he Court has never varied the rigor of its scrutiny depending on the presence or absence of a record of harassment and chill." Ct. App. Op. 1596 (footnote omitted); Appellants' Br. 177. We agree that "compelling interest" scrutiny is appropriate.[203] But this Court has never given the mere incantation of the word "chill" a talismanic effect, and should not do so here. The court of appeals properly considered the virtual absence of proof in the record in applying the compelling interest test.

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[203] We do urge, however, that a component of that test in the associational disclosure cases has always been the degree of harm actually suffered as a result of the challenged disclosure of associational ties.

C. The Threshold Amounts for Disclosure Are Not Unconstitutionally Overbroad

Appellants attack the disclosure provisions on the theory that the disclosure of some contributions greater than $100 but less than some unidentified amount is unnecessary to deter political corruption. Appellants' Br. 184-89.[204] Appellants further suggest that these threshold levels are arbitrary because they are not calibrated for different elective offices. *Id.* at 188-89. Apparently, appellants contend that Congress was constitutionally required to legislate an assumption that Representatives can be improperly influenced more cheaply than Senators, and Senators more cheaply than Presidents.

In focusing solely on the anti-corruption values served by disclosure, appellants wholly ignore the informational role disclosure plays. Apart from the significance of a contribution in excess of $100 by itself, the disclosure of many such contributions from common or related sources can identify the nature of a candidate's financial "constituency." The possibility that such pooling can produce significant aggregate contributions is illustrated by the reports of one Senator, which disclosed that he had received on one day 247 individual contributions from one corporation's employees—totalling $28,025—for his reelection campaign.[205]

Appellants' theory that the thresholds require disclosure of contributions too low to have any relation to

[204] The United States *Amicus* Brief (at 86-87) incorrectly states that disclosure is required for contributions of $100. In fact, disclosure is required only for contributions "in excess of $100." 2 U.S.C. § 434(b)(2).

[205] *See* Reports of Receipts and Expenditures filed with the Secretary of the Senate for the period April 7, 1972 through May 30, 1972 by Senator Robert Griffin and political committees supporting him.

public corruption has been rejected by the courts. In *Stoner* v. *Fortson*, *supra*, the three-judge court recognized that:

> "[A] cut-off point had to be established somewhere. . . . This court views the $101 or more threshold as a rational attempt . . . to establish a level of contribution that will attract the attention of the candidate and thus begin to satisfy the goals of the statute." 379 F. Supp. at 712-3 (citations omitted).[206]

Appellants present no new factual basis for this Court to hold that the threshold chosen by Congress is so unreasonable as to be unconstitutional. In *United States* v. *Finance Committee*, *supra*, the court rejected an argument similar to appellants' in precisely these circumstances:

> "Appellant says the allowance of secrecy only to gifts of $100 and under would chill many campaign gifts [that] present no conceivable menace to the integrity of the electoral process, presumably those over $100 and under some other unknown figure. In the absence of data, we are in no position to make a merely speculative determination as to the degree of chill to be expected from publicity on donations of any particular amount, nor as to how large a gift is necessary to undermine the integrity of a candidate. The $100 figure is, it would appear, high enough for a political campaign to enjoy substantial financial support from secret gifts alone." 507 F.2d at 1200.

[206] The court in *Stoner* supported its conclusion by reference to the thresholds of the FECA of 1971 (in excess of $100) and FCPA of 1925 ($100), and to court rules that require federal judges to disclose gifts over $100. *Id.* at 712-13. It is noteworthy that Congress chose to permit tax deductions for political contributions up to $100. 26 U.S.C. § 218(b).

Congress' factual and practical judgment in deciding where the line should be drawn is entitled to great respect. *Burroughs* v. *United States*, *supra*, 290 U.S. at 548; *United States* v. *Finance Committee*, *supra*, 507 F.2d at 1200; *Stoner* v. *Fortson*, *supra*, 379 F. Supp. at 712-13; *see Pell* v. *Procunier*, 417 U.S. 817, 827 (1974). As was said in upholding the $100 disclosure threshold in *Burroughs*:

> "If it can be seen that the means adopted are really calculated to attain the end, the degree of their necessity, the extent to which they conduce to the end, the closeness of the relationship between the means adopted and the end to be obtained, are matters for congressional determination alone." 290 U.S. at 547-48.

D. The Disclosure Provisions Are Not Unconstitutionally Overbroad as Applied to Minor Party and Independent Candidates

Appellants contend that the challenged disclosure provisions are unconstitutionally overbroad as applied to minor party and independent candidates. Appellants' Br. 178-184. Appellants' premise for this argument is that the "present access" of such candidates to "governmental power is normally remote"—they have little chance of winning elections. *Id.* at 181.

Appellants are again myopic in focusing exclusively on one of the purposes served by disclosure—the prevention of corruption. Minor party and independent candidates—like major party candidates—hold themselves out to the electorate as possible ballot choices. Information about their contributors can be as useful to a voter's assessment of their qualifications as in the case of other candidates, particularly if the minor party or independent

candidate is beholden to political "angels" for financial support. "[T]he voting population has an interest in knowing the composition of the angels' wings, and what makes them fly." Ct. App. Op. 1545 n. 114.[207] There is no constitutional reason why voters should have to assess some candidates in greater darkness than others merely because the one candidate's established following is not yet numerous.

The test for exclusion proposed by appellants (Br. 127-39) (and by Judge Bazelon in partial dissent below (Ct. App. Op. 1593 n. 1)) hinges solely on the size of the candidate's established following. It bears no necessary relation to the alleged constitutional danger of harassment because of the level of controversy the party or candidacy engenders. And indeed it could not, for no such test could be administered legislatively or judicially, even assuming its constitutionality.[208] Yet some parties with limited established followings may not be controversial at all.

Moreover, appellants' proposed exemption of minor party and independent candidates would open a poten-

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[207] Appellants' rejoinder that minor parties generally receive little money and have few large contributors (Br. 182 n. 8) comes oddly from their mouths in view of the emphasis elsewhere in their brief on the alleged reliance of minor parties on large "seed money" contributors. (*Id.* at 130-38.) If minor party and independent candidates do rely so little on large contributions—as is the case (*see* pp. 116-18, *supra*)—appellants' arguments about the alleged unconstitutional effects of contribution limits take on a hollow ring.

[208] *See* Ct. App. Op. 1596 n. 28 (Bazelon, J., concurring and dissenting in part). For example, a political party that is not controversial in Berkeley, California, or Cambridge, Massachusetts, might very well provoke considerable antipathy in Darien, Connecticut, or Cedar Rapids, Iowa. It would be absurd to suggest that the challenged disclosure provisions should apply only in the former locales.

tially disastrous loophole in the law. It would provide a strong incentive for fractionalization of our major parties and wholesale evasion of the challenged statutes. *Storer* v. *Brown*, 415 U.S. 724, 736 (1974). To hypothesize with the same liberty taken by appellants, a very popular candidate for the Republican nomination who is more conservative than President Ford might decide that he cannot secure the nomination and instead might break off from the Republican Party to form a new "More Republican Party" ("MRP"). Since the MRP has little established following, it would be a new party under the statute and under appellants' test. It would—if appellants' arguments are accepted—be permitted to raise and expend funds in total secrecy, and it might raise $1 million each from 30 millionaires. Such secrecy would subvert the enforceability of the statute's other provisions. Indeed, if appellants' full argument —that contribution and expenditure limits should not be applied to minor party and independent candidates—is accepted, the MRP could raise and expend much more than the $36 million limit imposed on other presidential candidates. The result would be a non-fringe party with potential "present access to governmental power" that could operate wholly in disregard of the challenged statutes, and therefore at a great advantage over the major parties.

Similarly, the applicability of the challenged statutes to Governor Wallace's campaign would depend under appellants' theory on whether or not Governor Wallace decides to run as a Democrat—a choice he has not yet made. During any period before or after running as a Democrat, Governor Wallace could amass and spend a campaign war chest unaffected by the campaign finance laws applicable to the activities of other serious

candidates—simply by disassociating himself from the Democratic Party.

These examples suggest the problems inherent in Judge Bazelon's attempt to distinguish *Stoner* v. *Fortson*, 379 F. Supp. 704 (N.D. Ga. 1974), as a case involving a "controversial" major party candidate rather than a "minor party" candidate. Ct. App. Op. 1596 n.28. Surely, the application of First Amendment principles cannot be made to turn on the name of the party under whose banner the controversial candidate chooses to campaign.

Appellants concentrate their argument on the improbability of victory for a minor party or independent candidate. Appellant Buckley and *Amicus Curiae* Longley graphically demonstrate that minor party and independent candidates sometimes win elections. In any event, appellants ignore the very practical effects non-major parties have on the electoral process—even when they do not win. Numerous examples need not be cited to demonstrate the increasing frequency with which third party and independent candidates have played a "balance of power" role in an election, or where a third party candidate has siphoned off sufficient votes to affect the outcome of an election or the candidates' positions on issues [209]—roles whose importance appellants elsewhere stress heavily. Appellants' Br. 120-123.[210] The voters are entitled to know who fuels such campaigns.

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[209] It is the stated intent of appellant Conservative Party of the State of New York to demonstrate its capacity to take votes away from major party candidates in order to influence their policies. Deposition Tr. at 47-51.

[210] The "stalking-horse" threat is a real danger. During President Nixon's 1972 campaign, the Committee for the Re-Election of the President considered the secret funding of La Raza Unida

Appellants thus prove nothing with their asserted paradox that the disclosure provisions (and giving and spending limits) apply to minor parties on the premise that they can win, while the distribution formula for general election public financing is premised on their inability to win. The application of the disclosure provisions (and the contribution and expenditure limits) to minor parties is premised not on their probability of victory, but on the practical reality that they seek and often do affect the electoral process; consistent with this premise, their eligibility for public financing is properly gauged on the degree of their probable effect on that process.

Appellants' suggestion that only winning minor party or independent candidates should be required to disclose their contributions would prevent disclosure from playing any pre-election role. Post-election disclosure cannot provide voters with information relevant to the exercise of the franchise—a role appellants recognize as

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in an attempt to draw the vote of Spanish-speaking Americans away from the Democratic presidential candidate in several key states. *Hearings Before the Senate Select Comm., supra* note 41, at 5533-34, 5677-80. In 1970, aides to President Nixon attempted to destroy the viability of Governor Wallace as a third-party presidential candidate in 1972 by funneling $400,000 in secret funds to his opponent in the 1970 primary election for the Democratic Party's gubernatorial nomination. Testimony of Herbert W. Kalmbach, *id.* at 2144-45. A 1973 investigation by the Secretary of State of California revealed that during 1972, California Republican organizations secretly paid the filing fees and contributed other campaign funds to thirteen Peace and Freedom Party candidates in key state assembly races. Sacramento Bee, July 4, 19, 1973. As a result of the investigation, the secret contributions and expenditures were set forth in amended campaign statements by several Peace and Freedom candidates. *See Socialist Workers 1974 California Campaign Committee* v. *Brown*, 2d Civ. No. 44922 (Cal. Ct. App., filed Sept. 9, 1974), Respondents' Memorandum in Opposition to Petition for Writ of Prohibition 32.

important. Appellants' Br. 171. Nor can post-election disclosure effectively deter corrupt campaign practices or aid in the enforcement of the other provisions of the challenged statutes.

Similarly, no judicially administrable line can be drawn to effectuate appellants' suggestion (Br. 182-83), echoed by some *amici*, that Congress segregate certain candidate-supporting minor parties for treatment as issue-oriented rather than candidate-oriented groups. Ct. App. Op. 1549-60; *see United States* v. *National Committee for Impeachment*, 469 F.2d 1135 (2d Cir. 1972). Who can decide whether appellant McCarthy is seeking election or merely the dissemination of his political philosophy?

In sum, the application of the challenged disclosure provisions to all candidate-supporting parties is neither indiscriminate nor overbroad. The statute is neutral in language and application; it is not aimed at and does not discriminate against any particular group because of the content of its speech or the composition of its members. It applies equally to all. *Civil Service Commission* v. *Letter Carriers*, 413 U.S. 548, 564 (1973). Appellants have wholly failed to prove any substantial "chilling effect." If a minor party or independent candidate can prove harm from the application of the disclosure statutes, the Federal Election Commission and ultimately this Court sit viligant to protect his rights.

VII. APPELLANTS HAVE FAILED TO SHOW THAT THE CHALLENGED PUBLIC FINANCING PROVISIONS DENY THEIR FIRST OR FIFTH AMENDMENT RIGHTS

To meet the compelling need to improve the electoral process, Congress decided on a combination of related

remedies. Public financing of presidential election campaigns is the most innovative of those remedies. In adopting these provisions, Congress took the first step toward ending the dependence of candidates for public office on private wealth.[211] Someone must pay the cost of election campaigns; as Senate Majority Leader Mansfield said:

> "Shall the piper be the whole of the American people through a system of public participation in campaign financing? Or shall the tune be called more and more in the beat of special interests and great wealth?" 113 Cong. Rec. 12165 (1967).

Appellants mount a wholesale attack on this reform. They claim that the Constitution precludes Congress from adopting *any type* of public financing for presidential elections. Appellants' Br. 145-52. They also contend that the particular provisions of Subtitle H abridge their freedom of speech and discriminate invidiously against them. *Id.* at 152-69. Both attacks are unfounded.

A. The Statutory Provisions

These laws contain two groups of provisions for the financing of presidential election campaigns. Chapter 95 of Subtitle H of the Internal Revenue Code establishes a Presidential Election Campaign Fund (the

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[211] A number of foreign countries have already taken such steps. *See, e.g.*, Casper, *Williams* v. *Rhodes and Public Financing of Political Parties under the American and German Constitutions*, 1969 Sup. Ct. Rev. 271, 288-302 (German law); D. Adamany & G. Agree, *supra* note 48, ch. 9. Conditions more or less unique to American politics make it difficult to generalize from the foreign experience. *See, e.g., id.* at 181.

For examples of state public financing laws, see *American Party* v. *White*, 415 U.S. 767, 791-92 (1974) (Texas law); statutes collected in *Developments in the Law—Elections*, 88 Harv. L. Rev. 1111, 1266 & n.176 (1975).

"Fund") in the Treasury, made up of amounts designated by individual taxpayers on their income tax returns under the voluntary $1 tax checkoff provision, 26 U.S.C. § 6096. Payments will be made from the Fund to finance the general election campaigns of eligible presidential candidates as well as party conventions at which the candidates are nominated. Chapter 96 of the same subtitle authorizes federal matching payments from the Fund to help finance presidential primary campaigns.

Chapter 95 provides that the candidates of major parties (parties whose candidates received 25 percent or more of the popular vote in the previous presidential election) are entitled to equal payments from the Fund for their general election campaigns. The payments to each major party candidate may not exceed the expenditure ceiling for presidential candidates under Section 608(c)(1)(B) of Title 18 ($20 million, plus an adjustment for inflation). 26 U.S.C. §§ 9002(6), 9004(a)(1).

The candidate of a minor party (a party whose candidate received 5 to 25 percent of the vote in the preceding presidential election) is entitled to the proportion of $20 million that its candidate's vote in the preceding presidential election bore to the average of the votes received by the candidates of the major parties. *Id.* §§ 9002(7), 9004(a)(2). In addition, if a minor party candidate performs better in the current election than his party's candidate did in the preceding election, he may receive an additional payment after the election up to the proportion that his vote bears to the average of the votes received by the major party candidates in the current election. *Id.* § 9004(a)(3).

The candidate of a new party (any party that is neither a major nor a minor party) will receive no payments before the election. However, if he wins five percent or more of the vote, he is entitled to receive a payment after the election according to the same formula applicable to minor parties. *Id.* §§ 9002(8), 9004(a)(3).

A candidate of a minor or new party must qualify to be on the ballot in ten or more states in order to receive assistance. *Id.* § 9002(2)(B).

A major party candidate who accepts public financing may not accept private contributions that would cause him to exceed the $20 million expenditure ceiling. Other candidates receiving federal financing remain free to solicit and receive private contributions, subject to the contribution limits and the expenditure ceiling. *Id.* § 9003(b)(2), (c)(2).

Chapter 95 also authorizes payments from the Fund to the national committees of major and minor parties to finance their presidential nominating conventions. A major party is entitled to payments up to $2 million, adjusted for inflation. A minor party is entitled to the proportion of this amount that its vote in the preceding presidential election bears to the average vote received by the major party candidates. Federal payments for conventions may not be used to pay the expenses of any candidate or delegate at a convention, but only to pay convention expenses incurred by the national committee. Every party is forbidden to spend more than $2 million for its convention, except that the FEC may authorize additional expenditures if necessitated by extraordinary and unforeseen circumstances. *Id.* § 9008.

Chapter 96 authorizes payments from the Fund to match private contributions raised by presidential primary candidates, up to $250 per contribution. *Id.* § 9034. To become eligible to receive matching payments, a candidate must raise $5,000 in contributions (counting only the first $250 of contributions from any individual) in each of 20 states. *Id.* § 9033. Since private contributions are matched dollar-for-dollar up to the $250 maximum, a candidate may receive no more than 50 percent of his spending ceiling for primaries from the Fund. *Id.* § 9034(b).

If the Secretary of the Treasury were to determine that the amount in the Fund might not satisfy the full entitlements of all eligible candidates, he would be required to withhold from candidates the amount necessary to assure that each candidate receives his pro rata share of his full entitlement. *Id.* § 9006(b), (d). However, the Vice-Chairman of the FEC recently estimated that the Fund will contain $100 million before the 1976 elections. He said that "it is safe to anticipate that sufficient funds will be available to provide all of the public financing required under the new campaign financing legislation." [212] Each year a growing number of taxpayers choose to participate in financing the presidential election by designating $1 of their tax liability for that purpose; in 1975 alone, more than $32 million was added to the Fund. *Id.* In 1976, the taxpayers, by their voluntary decisions—rather than large campaign donors—will for the first time finance the process by which the nation chooses its President.

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[212] *See* Federal Election Commission News Release, Oct. 15, 1975. *See also* Findings I, ¶ 74, IIA J.A. 34.

B. Public Financing of Campaigns Is a Proper Use of the Spending Power that Will Promote—Not Restrict—First Amendment and Other Fundamental Constitutional Values

The financing of campaigns for federal office is a valid and appropriate use of public money. Congress is authorized by the Constitution to raise and spend money to "provide for the . . . general welfare of the United States." [213] This Court has held that "the power of Congress to authorize expenditure of public moneys for public purposes is not limited by the direct grants of legislative power found in the Constitution." [214] It is up to Congress to decide what expenditures will promote the general welfare.

There could scarcely be a more legitimate use of public money than to reform the electoral process. Public financing will help to free candidates from dependence on large campaign contributions, reduce the fact and appearance of undue influence by large contributors, equalize the ability of all voters to participate in elections, and remove wealth or access to wealth as a qualification for election to office. Further, by diminishing the pressure to obtain private campaign funds, public financing will promote compliance with the vital disclosure requirements and giving and spending limits.[215]

Federal and state governments already pay many of the expenses of elections, recognizing that without polling and vote-counting machinery and all the related expenses there

[213] U.S. Const. art. I, § 8, cl. 1.

[214] *United States* v. *Butler*, 297 U.S. 1, 66 (1936). *See also Steward Machine Co.* v. *Davis*, 301 U.S. 548 (1937); *Helvering* v. *Davis*, 301 U.S. 619 (1937).

[215] *See, e.g.*, H.R. Rep. No. 1239, *supra* note 56, at 13-14.

could be no elections.[216] Campaigns are a no less necessary part of the electoral process.

Congress has previously used its taxing power for similar purposes, by providing federal income tax credits and deductions to encourage small contributions from large numbers of people.[217] This use of the taxing power is generally recognized not to "give rise to serious constitutional difficulties." [218] Moreover, Congress has a direct grant of legislative power to protect the electoral process. As shown above, Articles I and II authorize Congress to regulate the conduct of congressional and presidential elections.

> "[T]here can be no doubt that this broad scope of congressional power over elections is sufficiently ample to embrace the appropriation of funds with which to subsidize campaigns and parties. Congressional authority to tax and spend for the general

[216] Indeed, this Court held unconstitutional a state's attempt to require *candidates* to pay the cost of primary election machinery, stating that such a requirement would unfairly exclude candidates who were not wealthy and lacked wealthy supporters. *Bullock* v. *Carter*, 405 U.S. 134 (1972). The Court said:

> "viewing the myriad governmental functions supported from general revenues, it is difficult to single out any of a higher order than the conduct of elections at all levels to bring forth those persons desired by their fellow citizens to govern." *Id.* at 148-49.

As we have shown, high campaign costs have the same effect of excluding candidates who lack access to large sources of wealth.

[217] *See* Revenue Act of 1971, Pub. L. No. 92-178, 85 Stat. 497, §§ 701-03. The allowable credits and deductions are now $25 and $100, respectively. 26 U.S.C. §§ 41(b), 218(b).

[218] Rosenthal, *Campaign Financing and the Constitution*, 9 Harv. J. Legis. 359, 411, 417-18 (1972); Bickel, *supra* note 31, at 67; Fleishman, *Public Financing of Election Campaigns: Constitutional Constraints on Steps toward Equality of Political Influence as Citizens*, 52 N. Car. L. Rev. 349, 379 (1973). *See generally* H. Alexander, Tax Incentives for Political Contributions? (1961).

welfare surely provides the Congress with the power to implement its broad authority over elections even to the point of paying for them." [219]

Federal financing of campaigns no more offends the First Amendment than any of the other federal expenditures necessary to make elections and government work. Congress wrote these statutes with care to avoid coerced expression or coerced political association.[220] The amount that goes into the Fund is determined by the voluntary designations of taxpayers on their tax returns. In this way, the public indicates directly how much public money should be used to support the 1976 presidential campaigns.

Public financing of election campaigns places no restriction at all on First Amendment rights. No candidate is compelled to accept public financing. Appellants McCarthy and Libertarian Party have already announced they will refuse any such assistance. Findings III, McCarthy ¶ 30, IIB J.A. 718; Crane Deposition Tr. at 32-33, 62-63. The opportunity to accept public financing in no way restricts any person's freedom of speech, assembly, or petition; in-

[219] Fleishman, *supra* note 218, at 378-79 (footnote omitted). Appellants cite *Opinion of the Justices*, 197 N.E.2d 691 (Mass. 1964), holding that the Massachusetts constitution prohibits state financing of political campaigns because state funds may be spent only by state officers. That ruling has been criticized as "dubious" and having "little inherent logic." Rosenthal, *supra* note 218, at 411 n.188; Note, 78 Harv. L. Rev. 1260, 1261 (1965). Moreover, the state law involved was strikingly partisan and discriminatory: Had it been in effect for the 1964 Massachusetts gubernatorial election, the Democrats would have received 80 percent of the state funds. *Id.* at 1261. Finally, the Massachusetts ruling has no application to the federal Constitution; federal programs are numerous in which subsidies are given to persons who are not federal officials in order to promote public purposes. *E.g.*, 7 U.S.C. § 1281 *et seq.* (agricultural subsidies).

[220] *Compare International Association of Machinists* v. *Street*, 367 U.S. 740 (1961); *Lathrop* v. *Donohue*, 367 U.S. 820 (1961).

stead, it facilitates political expression by ensuring that qualified candidates will have the resources necessary to conduct effective campaigns.

C. Appellants' "Establishment" Argument Fundamentally Misconceives the Role of Government in Fostering Free Expression

Appellants lack authority for the sweeping assertion that no form of public financing of election campaigns is permissible under the Constitution. They would have this Court fill the void by "analogy" to the establishment of religion clause of the First Amendment.

The argument begins by assuming its conclusion. The Government has not "declared to the voter that some parties are more worthy of adherence than their competitors." Appellants' Br. 149. No political party has become "officially sponsored by the government." *Id.* at 145. There is no evidence here of a "scheme to establish political parties." *Id.* at 146 n.3, 148. Nor can any such scheme be concocted from the remains of defeated floor amendments (*id.* at 146 n.2) and easy speculation as to "a new formula" that "might be enacted." *Id.* at 150.[221] Appellants' "establishment" argument must stand or fall on the strength of the "analogy" asserted.

The First Amendment deals with religious freedom by marking two boundaries: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." These clauses, in the classic analysis of Professor Kurland, "should be read as stating a single precept: that Government cannot utilize religion as a standard for action or inaction because these clauses,

[221] To the extent these statements are simply an alternative formulation of appellants' "discrimination" contentions, we respond in Subparts D-F below.

read together as they should be, prohibit classification in terms of religion either to confer a benefit or to impose a burden." Kurland, *Of Church and State and the Supreme Court*, 29 U. Chi. L. Rev. 1, 96 (1961). In short, the Government may neither favor one religion over another nor promote religion generally.

The First Amendment forbids only "abridging" the freedom of speech or of the press; there is no speech or press equivalent of the establishment clause. The Constitution does not forbid the Government to foster free expression. Indeed, it is difficult to understand how the framers could have intended to prevent the Government from spending money to inform and educate the public, communicate new and controversial ideas, and promote expression by private citizens as well.

In a variety of ways, the Government recognizes that "under the Constitution speech is a premium good, to be assiduously fostered." United States *Amicus* Br. 96. It provides tax incentives to organizations devoted to developing and disseminating ideas, including the American Enterprise Institute for Public Policy Research, the Brookings Institution, the Ford Foundation, the Heritage Foundation, the National Right to Work Legal Defense and Education Fund, Planned Parenthood, and the Sierra Club Foundation.[222] The Government provides direct financial assistance to the arts and humanities, based on an express congressional finding that "it is necessary and appropriate for the federal government to help create and sustain not only a climate encouraging freedom of thought, imagina-

[222] Department of the Treasury, Internal Revenue Service Pub. 78 (1-75), Cumulative List of Organizations Described in Section 170(c) of the Internal Revenue Code of 1954, at 23, 101, 279, 360, 554, 628, 711 (rev. to Oct. 31, 1974).

tion, and inquiry but also material conditions facilitating the release of this creative talent." 20 U.S.C. § 951(5).

Moreover, the Government provides affirmative assistance to the press. The Newspaper Preservation Act, 15 U.S.C. §§ 1801-04, creates a special antitrust exemption for joint operating arrangements among newspapers, in order to maintain two editorial voices in communities where only one could otherwise survive. That Act has been upheld against a constitutional challenge based on the First and Fifth Amendments. *Bay Guardian Co.* v. *Chronicle Publishing Co.*, 344 F. Supp. 1155 (N.D. Cal. 1972). There are special United States Postal Service rates for "newspapers and other periodical publications" (39 C.F.R. § 132.2(a)(1), formerly 39 U.S.C. § 4351), as well as a special rate for certain "books" and other "educational" material (39 C.F.R. § 135.2(a)(4), formerly 39 U.S.C. 4554(a)). This Court at least implicitly upheld these provisions in affirming the constitutionality of a statute requiring that newspapers using second-class mail rates reveal certain information about their ownership and management. *Lewis Publishing Co.* v. *Morgan*, 229 U.S. 288 (1913). The Government directly disseminates news in competition with private entities, an activity recently upheld against First Amendment attack. *P.A.M. News Corp.* v. *Butz*, 514 F.2d 272 (D.C. Cir. 1975). And it provides special assistance to the Corporation for Public Broadcasting for the production of public affairs and other programs and to others for the construction of noncommercial educational broadcasting facilities. 47 U.S.C. §§ 390-96. Public support for a similar religious enterprise would of course be unconstitutional.

Professor Zechariah Chaffee, Jr. summarized the affirmative role of Government in supporting free expression as follows:

> "Just as unrestricted freedom of locomotion would be useless without streets and roads, so when communication passes beyond a conversation in a small group, somebody must provide means for reaching hearers, readers, or other consumers. Often the state or some other governmental agency is best fitted to supply the essential facilities." [223]

Through Subtitle H, the Government provides "essential facilities" which it is "best fitted to supply"—the campaign funds that will enable presidential candidates to communicate their views free of the problems associated with large private contributions.

Appellants contend—again, "by analogy" to the establishment clause—that federal financing will "necessarily involve excessive entanglement." Appellants' Br. 149. Again, that statement is premised on a series of sweeping speculations, such as the assertion that "Congress will thus continuously debate the question of who is to have what political power." *Id.* As the United States points out, "the Court, of course, must determine how likely these events are and whether, if they did occur, a judicial remedy at that time would offer a solution." *Amicus* Br. 97.

Moreover, the concept of "entanglement" is singularly appropriate in analyzing questions of religion because the Constitution precludes both restrictive and affirmative action by the Government in that area—including affirmative action that is evenhanded among competing religions.[224] Because the Constitution dictates the strictest neutrality—because the Government, in Professor Kur-

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[223] Z. Chafee, Jr., Government and Mass Communications 479 (1947, Repr. ed. 1965). *Accord,* T. Emerson, *supra* note 31, ch. XVIII.

[224] *E.g., Meek* v. *Pittinger,* 95 S. Ct. 1753 (1975); *Lemon* v. *Kurtzman,* 403 U.S. 602 (1971).

land's phrase, "cannot utilize religion as a standard for action or inaction"—any involvement must be scrutinized for evidence that the wall of separation has been breached. But no similar concern exists when the Government fosters political communication, any more than when it assists newspapers and news services, public broadcasting, or the arts and humanities or otherwise promotes the development and communication of ideas.

Of course, when the Government undertakes to provide such assistance, it must do so in an evenhanded manner. *West Virginia State Board of Education* v. *Barnette,* 319 U.S. 624 (1943); *Hague* v. *CIO,* 307 U.S. 496 (1939). Public financing of elections must be undertaken only in such a manner as will not "freeze the political status quo," *Jenness* v. *Fortson,* 403 U.S. 431, 438 (1971); *Williams* v. *Rhodes,* 393 U.S. 23, 32 (1968). We therefore turn from apepllants' sweeping assertions about the nature of all public financing to their allegations that the particular provisions before this Court are unconstitutionally discriminatory.

D. In Providing Financial Assistance For Presidential Election Campaigns, Congress May—and Must—Make Rational Differentiations Among Political Movements

Chapters 95 and 96 are ameliorative in character, designed to reform the electoral process by removing the evils that flow from dependence on large private contributions. As such, they are subject to this Court's statement in *Katzenbach* v. *Morgan* that

> "the principle that calls for the closest scrutiny of distinctions in laws denying fundamental rights . . . is inapplicable [to a statutory formula that serves] only as a limitation on a reform measure aimed at

> eliminating an existing barrier to the exercise of the franchise. Rather, in deciding the constitutional propriety of the limitations in such a reform measure we are guided by the familiar principles that a 'statute is not invalid under the Constitution because it might have gone farther than it did' . . . that a legislature need not 'strike at all evils at the same time,' . . . and that 'reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind' . . . ." 384 U.S. 641, 657 (1966).

Chapters 95 and 96 "should be scrutinized under judicial principles sensitive to" the fact that their "thrust . . . is affirmative and reformatory," even though "every reform that benefits some more than others may be criticized for what it fails to accomplish." [225]

Any system of campaign financing must deal with the structural differences among parties and political movements and the relative degrees of support they have obtained. Chapters 95 and 96 contain allocation formulas that, like any such formulas, may be capable of producing questionable results in hypothetical or extreme circumstances.[226] However, that mere possibility provides no basis for invalidating the statute before it has had a chance to work.

Congress need not give public money to every person who calls himself a candidate for the Presidency, but may limit assistance to candidates who have demonstrated

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[225] *San Antonio School Dist.* v. *Rodriquez*, 411 U.S. 1, 39 (1973).

[226] Appellants acknowledge that direct payments "necessarily involve allocative formulas" (Br. 149), but draw from this fact the conclusion that the Constitution prohibits any federal financing, on the ground that "*no* formula can ever be fair to everyone." *Id.* (Emphasis in original.) On that theory, a good part of the laws of the United States must fall.

"a significant modicum of support." [227] Such a limitation is obviously needed to prevent waste of the taxpayers' money, to permit the fair and effective administration of the electoral process, and to avoid the confusion that would result if every self-declared candidate, whatever his support, were given substantial financial backing. The Court has recognized that

> "a State has a legitimate interest in regulating the number of candidates on the ballot. *Jenness* v. *Fortson*, 403 U.S., at 442; *Williams* v. *Rhodes*, 393 U.S. at 32. In so doing, the State understandably and properly seeks to prevent the clogging of its election machinery, avoid voter confusion, and assure that the winner is the choice of a majority, or at least a strong plurality, of those voting, without the expense and burden of runoff elections. . . . Moreover, a State has an interest, if not a duty, to protect the integrity of its political processes from frivolous or fraudulent candidacies." [228]

Various statutory tests can and have been used to accomplish these purposes. Every state imposes qualifications that a candidate must meet to be listed on the ballot. State laws generally allow candidates of established parties, which have received substantial support in past elections, to be listed on the basis of their past electoral support. Independent candidates and candidates of new parties may generally obtain ballot position by showing their support in some other way, such as submission of petitions

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[227] *Jenness* v. *Fortson*, 403 U.S. 431, 442 (1971).

[228] *Bullock* v. *Carter*, 405 U.S. 134, 145 (1972). *Accord, American Party* v. *White*, 415 U.S. 767, 782 n.14 (1974); *Storer* v. *Brown*, 415 U.S. 724, 732-33 (1974); *Lubin* v. *Panish*, 415 U.S. 709, 715-16 (1974).

signed by a specified percentage of the electorate.[229] Although constitutional questions have arisen in a few cases where states imposed unreasonably onerous ballot qualifications,[230] the Court has held that reasonable conditions of this type are permissible and that the interests they serve are compelling.[231] Just as a state may refuse ballot position altogether to candidates or parties that fail to show significant public support, the federal government may—under neutral criteria—refrain from affording insubstantial candidates the same amounts of federal campaign assistance as significant candidates.

Indeed, an additional compelling interest is present in the case of public financing that does not come into play when only a ballot position is at stake. If public financing were available to every potential candidate, regardless of his chance of success, it would create an artificial and non-neutral stimulus to the proliferation of splinter parties, endangering the stability and effectiveness of the two-party system that has evolved without government intervention. This Court has recognized that avoidance of splinter parties and maintenance of political stability are compelling interests:

> ". . . California apparently believes with the founding fathers that splintered parties and unrestrained factionalism may do significant damage to the fabric of government. See The Federalist, No. 10 (Madison) . . . . [T]he State's interest in the stability of its political system . . . . [is] not only

[229] *See Developments in the Law—Elections*, 88 Harv. L. Rev. 1111, 1123-26 (1975).

[230] *See Williams* v. *Rhodes*, 393 U.S. 23 (1968); *Bullock* v. *Carter*, 405 U.S. 134 (1972); *cf. Storer* v. *Brown*, 415 U.S. 724 (1974).

[231] *See Jenness* v. *Fortson*, 403 U.S. 431 (1971); *American Party* v. *White*, 415 U.S. 767, 786 (1974).

> permissible, but compelling . . . ." *Storer* v. *Brown*, 415 U.S. 724, 736 (1974).

The Court has recognized similar interests in holding that states may require voters to be party members for some period of time before a primary, *Rosario* v. *Rockefeller*, 410 U.S. 752, 760-62 (1973); *id.* at 765, 768-69 (dissenting opinion). The Court has suggested that there is a compelling interest in protecting "a two-party system in order to encourage compromise and political stability," as long as a statute does not impermissibly "favor two particular parties." [232]

Subtitle H does not affirmatively favor either the two-party system or any particular parties; its formula would work equally well if, for example, there were three major parties. After considering the constitutional issues at length,[233] Congress carefully avoided altering the political balance *either* by freezing out third party movements *or* by artificially inducing them.[234] To hold that Congress cannot make distinctions for that purpose "would utterly violate common sense." [235] "Sometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike." *Jenness* v. *Fortson*, 403 U.S. at 442.

[232] *Williams* v. *Rhodes*, 393 U.S. 23, 31-32 (1968); *see Developments in the Law—Elections*, 88 Harv. L. Rev. 1111, 1138 (1975) ("It seems undeniable that the political stability that a two-party system fosters . . . is a compelling state interest."). *See also* Affidavit of James MacGregor Burns, *supra* note 58, ¶ 11.

[233] *See, e.g.*, 112 Cong. Rec. 28250-53 (1966); 113 Cong. Rec. 8059-63, 8299-300, 8309-11, 8321-22 (1967); 117 Cong. Rec. 45826 (1971); S. Rep. No. 310, *supra* note 172, at 8-9.

[234] *See* H.R. Rep. No. 1239, *supra* note 56, at 13; S. Rep. No. 689, *supra* note 35, at 8.

[235] Fleishman, *supra* note 218, at 398-99.

E. Appellants Have Failed To Prove That Chapter 95 Invidiously Discriminates Against Them

Appellants allege that the system of public financing for presidential general election campaigns established by Chapter 95 is unconstitutional because it discriminates against third parties. But in fact Chapter 95 provides for differential treatment based on an objective formula that is reasonably designed to avoid artificial distortion of third party strength and that leaves the way open for a new or minor party to become a major party in the next election if it attracts enough popular support.

Assuming that the Fund contains a sufficient amount from designations by taxpayers under Section 6096 (as is virtually certain for 1976), a major party candidate will receive $20 million for his general election campaign. (For simplicity, this discussion disregards the effect of the inflation adjustment under 18 U.S.C. § 608 (d).) Since he is not permitted to spend more than that amount, he will not be allowed to accept private campaign contributions.[236] A minor party candidate will receive a proportionate amount based on his party's performance in relation to the average of the major parties in the last election.

A new party will receive federal assistance only if it establishes significant public support by obtaining five percent or more of the vote in the current election. If it does so, or if a minor party betters its previous performance vis-a-vis the average of the major parties, the new or minor party will receive additional payments

[236] 26 U.S.C. § 9003(b). Of course, a major party candidate may refuse to accept federal financing. If he does so, he will be free to solicit and receive contributions and to make expenditures up to the $20 million ceiling in § 608(c), plus 20 percent for fund-raising costs.

based on its electoral showing. Since that showing cannot be known until the votes are counted, the additional payments can only be made after the election. Such a party will be free to raise and spend private contributions up to the ceiling.

If a minor or new party receives 25 percent of the vote in a presidential election, it will be a major party in the next election and receive $20 million of assistance. Moreover, if its vote matches the average of the major parties' votes, its post-election payments for the current election will bring it up to the major parties' $20 million level of assistance.

These formulas represent a conscientous effort by Congress to be evenhanded in the treatment of different types of political movements without improving the lot of any at the expense of others. Major parties—that is, those with broad past support—receive equal assistance in amounts greater than those received by minor parties. In giving the major parties equal amounts, Congress recognized that each of them is a vehicle for political expression by a sizeable portion of the population and attempts to appeal to a majority of the electorate. To give greater resources to either, based on its success in the preceding or the current election, might increase the advantage of the incumbent party and make it more difficult for a new majority favoring the opposition to replace the party in power. As a practical matter, the voters' only real alternative to the party in power is often a major party out of power, and the challenged legislation does not weaken that alternative. Neither of the present major parties challenges this equal treatment as a plaintiff here.

The differential treatment of minor parties is permissible in view of the "obvious differences in kind between

the needs and potentials of a political party with historically established broad support, on the one hand, and a new or small political organization on the other." *Jenness* v. *Fortson*, 403 U.S. at 441. A minor party's strength is reasonably measured by comparison to the average of the major parties.[237]

The statute in no way enshrines any particular parties; it leaves all parties free to move from one category to another on the basis of demonstrated public support.[238] A major party will become a minor party if it fails to attract 25 percent of the vote in a presidential election. Minor or new parties are equally free to move upward as they gain public support. Thus, the statute does not impair the "potential fluidity of American political life." [239]

1. *Contrary to Appellants' Assertions, the Record Shows a Lengthy and Persistent Effort By Congress to Adhere to This Court's Guidance*

The major thrust of appellants' attack on the treatment of third parties is their assertion that "Congress had little use for third parties . . . ." [240] Of course, any

[237] "To insure constitutionality, . . . the minor party entitlement . . . should be calculated . . . as a ratio, in other words as the proportion of the major party entitlement which the minor party vote bears to the average of the major party votes. . . . Such a ratio also ensures that if a minor party acquires more and more votes, its subsidy entitlement will not be markedly less than the major parties' entitlement at points just below the threshold for qualification as a major party." Fleishman, *supra* note 218, at 401.

[238] *Cf. Morey* v. *Doud*, 354 U.S. 457 (1957).

[239] *Jenness* v. *Fortson*, 403 U.S. 431, 439 (1971).

[240] Appellants' Br. 161. Appellants cite in support of this proposition the statement in S. Rep. No. 689, *supra* note 35, at 8, regarding the fear that "splinter parties" and candidates "would undermine the stability provided by a strong two party system . . . ." The language so disapproved by appellants is practically a quote

congressional debate necessarily reflects the differing—and sometimes conflicting—motives of the members of Congress involved. And any congressional discussion of political matters inevitably contains some frank political talk by a few individual members that may be far from the view of the majority. But as Mr. Justice Cardozo said, despite the spread of "psychoanalysis . . . to unaccustomed fields . . . . [t]here is a wise and ancient doctrine that a court will not inquire into the motives of a legislative body or assume them to be wrongful." *United States* v. *Constantine*, 296 U.S. 287, 299 (1935) (dissenting).

Moreover, a review of the legislative record shows that Congress took care to avoid discriminating against third party candidates. In 1971, at the opening of the debate on the Pastore Amendment that became Chapter 95, Senator Kennedy, a co-sponsor, spoke directly to this question:

> "The 5 to 25 percent formula strikes a reasonable balance for minor parties and new parties. It neither freezes them out entirely, nor encourage[s] them excessively. The threshold showing required of such parties is low enough to prevent 'locking in' the existing two-party system, and yet high enough to prevent the artificial proliferation of splinter parties set up merely to have a political joyride at the taxpayer's expense in a presidential year." 117 Cong. Rec. S18894 (daily ed. Nov. 17, 1971).

Three years later, commenting on this formula, the Senate Rules Committee expressed a virtually identical concern:

from this Court's decision in *Storer* v. *Brown*, 415 U.S. 724, 736 (1974), *see* pp. 196-97 *supra*.

"The bill also provides a balanced approach to the difficult issues posed by minor parties.

"On the one hand, the Committee bill would not stimulate a proliferation of splinter parties or independent candidates. Such a proliferation would undermine the stability provided by a strong two-party system and could polarize voters on the basis of a single volatile issue.

* * * *

"At the same time, minor parties with significant support are eligible to receive a fair share of public assistance commensurate with their proven political strength.

* * * *

"In short, minor parties will retain their present opportunity—one constitutionally required—to grow into a major political force if their support is widespread and not a transient phenomenon. As the United States Supreme Court has noted, the legitimate interest in preserving the benefits of two major parties does not justify laws which would choke off competition by other parties with potential appeals to the electorate.

"The bill complies with this requirement. It does not prevent minor parties from placing candidates on the ballot or from organizing resources to support them. It does not freeze the political status quo. Compare *Williams* v. *Rhodes*, 393 U.S. 23 (1968), with *Jenness* v. *Fortson*, 403 U.S. 431 (1971)." S. Rep. No. 689, *supra* note 35, at 8-9.

As the court of appeals observed, "the legislative history indicates that Congress had in mind the Supreme Court's specific approval in *Jenness* of a system which bases differential treatment on 'demonstrated relative strength' in prior elections." (Ct. App. Op. 1564) Indeed,

the development of public financing legislation closely tracks the guidance provided in this Court's decisions. The original public financing measure for presidential elections was adopted in 1966, when this Court had provided little illumination of the area. Presidential Election Campaign Fund Act of 1966, Pub. L. No. 89-909, 80 Stat. 1587-90. The 1966 Act placed parties rather than candidates in control of funds, required minor parties to poll over seven percent of the votes in the previous election in order to receive any financing, and failed to provide any payments whatsoever based on performance in the present election.[241] In 1967, after substantial debate, Congress suspended the operation of the 1966 statute. 81 Stat. 57. The Court's decision the following year in *Williams* v. *Rhodes* raised additional questions about the kinds of distinctions incorporated in the suspended 1966 Act. It was not until this Court's unanimous decision in *Jenness* on June 21, 1971, that clear guidelines became available on the permissible scope of differentiation in providing public financing for both major and minor parties. Five months after that decision, Senator Pastore introduced the provision that became Chapter 95.[242] This Court's later decisions in *Bullock*, *Storer*, and *American Party* were promptly re-

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[241] All of these problems are remedied in the challenged legislation. *Compare* Pub. L. No. 89-809, § 303(c), 80 Stat. 1588-89, *with* 26 U.S.C. §§ 9003, 9004, 9006; *compare* Pub. L. No. 89-809, § 303 (c)(2)(B), 80 Stat. 1588, *with* 26 U.S.C. § 9002(7); *compare* Pub. L. No. 89-809, § 303(c)(2), 80 Stat. 1588-89, *with* 26 U.S.C. § 9004 (a)(3).

[242] Sen. Amdt. No. 692 to H.R. 10947, 92d Cong., 1st Sess. (Nov. 16, 1971). Chapter 95 was originally enacted, in substantially its present form, by title VIII of the Revenue Act of 1971, Pub. L. 92-178, to become effective after the 1972 presidential election, *id.* § 802. It was modified in 1973 by Pub. L. 93-53, § 6, *see* note 256, *infra*, and by the FECA Amendments of 1974, Pub. L. 93-443, §§ 403-08.

flected in congressional debate and reports. Thus there is ample evidence that Congress showed serious concern —not "little use"—for third parties and paid close attention to this Court's recent decisions on the subject.

2. *The Treatment of Minor Parties is Not Invidiously Discriminatory*

Appellants attack the formula for assistance to minor parties, asserting that various hypothetical events might yield results they find unsatisfactory. Appellants' Br. 153-54. But Congress cannot be expected to act with mathematical precision. The Constitution does not require precise adherence to an equal-dollars-per-vote standard or any other arbitrary rule.[243] If Congress adopts an objective standard that reasonably reflects relative electoral performance, as it has in Chapter 95, the requirements of equal protection are satisfied. The "procedure may not always be a completely precise or satisfactory barometer of actual community support for a political party, but the Constitution has never required the States to do the impossible." *American Party* v. *White*, 415 U.S. at 786-87.

Besides, it would be premature and unwise for the Court to test Chapter 95's formula for assistance to minor parties on the basis of speculative and hypothetical future events, rather than on the facts before it and the experience of history. Appellants ignore the significant forces that have been shown to govern the emergence of third parties in this country.

> "The emergence of significant third parties depends on the coincidence of four factors: severe national conflict over a few very important issues, a period of "crisis politics"; division of the electorate on one or more of these issues into at least one intense and estranged minority and a broad majority; rejection or avoidance of the position of the minority by both major parties, causing alienation of the minority; and a politician or political group willing to exploit the situation by initiating a new party. Such a combination assures an appreciable third-party vote.
>
> "The conditions, however, are cumulative; each is necessary for the next to operate. Hence, except in a period of crisis, politically active minorities will usually be absorbed by the major parties; seldom will they be drawn into a third party. If during a crisis the major parties take opposing positions, little leeway remains for a third party. Lacking a political crisis and an intense minority to appeal to, few politicians of repute will venture to lead a third-party effort. But in a period of crisis when a minority emerges and the major parties ignore it, significant third parties appear. Together, the four conditions are sufficient to produce a large third-party vote." [244]

It is highly unlikely that a movement with such political force will be unable to raise sufficient private financing to communicate its views effectively—or that its emergence will be deterred by the prospect of differential treatment in federal campaign financing.

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[243] Even if dollars-per-vote were the appropriate constitutional standard, appellants' hypotheticals show no discrimination. Because minor party financing is determined by the average showing of the major parties, minor parties will receive fewer dollars per vote than the lower ranking major party, but more dollars per vote than the winning party. It is difficult for a minor party to allege discrimination when it has been benefited (on the dollars-per-vote standard) more than the victor.

[244] D. Mazmanian, Third Parties in Presidential Elections 136-37 (1974). *See also id.* at 26-27; J. Sundquist, Dynamics of the Party System ch. 13 (973).

Indeed, history suggests that the availability of funding under the formula of Chapter 95 would, if anything, have benefited significant past third-party movements. For example, appellants assert that "had the challenged statutes been in effect at the time of the emergence of the Republican Party, 'the grave of Abraham Lincoln would have been just another burial plot in the cemetery.'" Appellants' Br. 152 n.7; *accord*, Metcalf *Amicus* Br. 30. But the Republican party did not burst unexpectedly to victory in 1860; the rise of the slavery issue "as a polarizing force was reflected in a slow and intermittent but inexorable rise in the voting power of the third-party movement[ ]."[245] The Republican Party had received one-third of the vote in 1856, and Lincoln would have received full federal financing for his 1860 campaign. *See* Findings I, ¶ 85, IIA J.A. 37.

Moreover, only once in modern history have we faced a situation remotely resembling those hypothesized by appellants—when the Bull Moose party split from the Republican Party in 1912. Even here, appellants' hypothetical examples are addressed not to the effect of the formula in an election such as 1912, but to its effect in the next ensuing election. History suggests appellants' concern is misplaced. Almost invariably, a "major party actively courts the disaffected group and wins its confidence, spelling doom for the third party."[246] For example, in 1916 the Progressives again nominated Theodore Roosevelt; the Republicans nominated the progressive Charles Evans Hughes, which led Roosevelt to withdraw in favor of Hughes and eliminated a separate Progressive ticket.[247] Although the prospect of public financing for the third party in a forthcoming election might increase its resistance to such courtship, it would also enhance the major party's incentive to bring the disaffected group within its fold.

[245] J. Sundquist, *supra* note 244, at 289-90. *See also id.*, chs. 4-5; D. Mazmanian, *supra* note 244, at 39-46.

[246] D. Mazmanian, *supra* note 244, at 139. *See also id.* at 25-26, 143-44, 149.

But most importantly, no such question is presently before this Court. The major parties each received over 25 percent and no other party received between five and 25 percent of the vote in the 1972 election. Neither the Bull Moose phenomenon nor any of its variants can affect the operation of the formula in the 1976 election, and no present or potential candidate—let alone any appellant—presently qualifies for minor party treatment under Chapter 95 in the 1976 election. If a Bull Moose phenomenon occurs in 1976, it will be time enough then for Congress to make any necessary adjustments for 1980, and if it fails to do so, for this Court to judge the constitutionality of the formula in such a context.

3. *The Treatment of New Parties Is Not Invidiously Discriminatory*

Appellants contend that Chapter 95 invidiously discriminates against new parties by denying them financial assistance for an election campaign because of their fail-

[247] J. Sundquist, *supra* note 244, at 165. Whether or not Roosevelt had withdrawn, application of the current formula to the 1916 election would not have produced an unreasonable financial result. The Democratic candidate and any Progressive candidate would each have received an equal amount, and the Republican candidate would have received 67 percent of that amount. *See* Findings I, ¶ 85, IIA J.A. 40. Hughes, the Republican candidate, would almost certainly have been able to raise the remaining 33 percent from private contributions, as the formula permits, and thus to spend the same amount as President Wilson.

A further example is provided by the absorption of the People's Party, which gained 8.5 percent of the popular vote in 1892, into the Democratic party by the time of the 1896 election. *See* J. Sundquist, *supra* note 248, ch. 7.

ure to receive five percent of the vote in the preceding presidential election or in the current presidential election. We disagree.

Recent decisions of this Court make clear that there is nothing unconstitutional about denying federal assistance to parties that failed to gain a significant vote in the preceding election. In *Jenness* v. *Fortson*, 403 U.S. 431 (1971), the Court unanimously upheld a statutory formula indistinguishable from Chapter 95, which was applied by Georgia to determine which candidates were entitled to positions on the ballot for elective state offices.

The Georgia law entitled any political organization whose candidate had received 20 percent or more of the vote in the last gubernatorial or presidential election to have its candidate automatically placed on the ballot in the next election. Any other political organization could have its nominee placed on the ballot only by filing a nominating petition signed by five percent or more of those eligible to vote at the last election for the office sought. The Court rejected the claim that these requirements operated "to freeze the political status quo":

> ". . . Georgia in no way freezes the status quo, but implicitly recognizes the potential fluidity of American political life. Thus, any political body that wins as much as 20% support in an election becomes a 'political party' with its attendant ballot position rights and primary election obligations, and any 'political party' whose support at the polls falls below that figure reverts to the status of a 'political body' with its attendant nominating petition responsibilities and freedom from primary election duties. We can find in this system nothing that abridges the rights of free speech and association secured by the First and the Fourteenth Amendments." *Id.* at 439-40.

This reasoning applies precisely to the treatment of new parties in Chapter 95.

The Court in *Jenness* also rejected the argument that the need of some candidates to obtain signatures of five percent of the electorate invidiously discriminated against those candidates. The Court pointed out that the nomination of a major party is difficult to obtain. It refused to assume that it is "inherently more burdensome" for a candidate to gather the signatures of five percent of the electorate than it is to win the nomination of a party whose broad support in the last election entitles its nominees automatically to ballot positions.

> "The fact is, of course, that from the point of view of one who aspires to elective public office in Georgia, alternative routes are available to getting his name printed on the ballot. He may enter the primary of a political party, or he may circulate nominating petitions either as an independent candidate or under the sponsorship of a political organization. We cannot see how Georgia has violated the Equal Protection Clause of the Fourteenth Amendment by making available these two alternative paths, neither of which can be assumed to be inherently more burdensome than the other." *Id.* at 440-41.

The Court upheld the five percent support requirement, stating that:

> "There is surely an important state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization's candidate on the ballot—the interest, if no other, in avoiding confusion, deception, and even frustration of the democratic process at the general election." *Id.* at 442.

The five percent support requirement for federal financing in Chapter 95 is valid for the same reasons. There is no ground for assuming that it is necessarily more burdensome for a candidate to obtain five percent of the vote in a general election than it is to win the nomination of one of the established political parties. An aspirant for the Presidency may seek that office by alternative routes: working within an established party or forming a new political organization. Appellant McCarthy, having tried the former route in 1968, has now chosen to try the latter. Chapter 95 holds out the prospect of federal assistance in the general election to a candidate who qualifies either by winning a major or minor party nomination or by winning five percent or more of the general election vote. Congress did not deny equal protection of the laws "by making available these two alternative paths."

Chapter 95 is no more discriminatory if considered from the viewpoint of a new party—like the Libertarian Party—rather than its candidate. Obviously, a new party would be better off if, despite its lack of a track record of public support, Chapter 95 treated it as favorably as it does parties with a record of electoral success. However, Congress is not forbidden to require that a party establish "a significant modicum of support," *id.* at 442, in one way or another. Nor is the five percent figure chosen by Congress an "impossible dream." Over the past century, a minor party candidate achieved over five percent in four of the 25 presidential elections, or 16 percent of the time.[248] The choice of that percentage

[248] *See* Findings I, ¶ 85, IIA J.A. 38-40 (James B. Weaver, People's Party, 1892; Theodore Roosevelt, Progressive Party, 1912; Robert M. LaFollette, Progressive Party, 1924; George C. Wallace, American Independent Party, 1968).

figure, which is the same as the one upheld in *Jenness*, is obviously a permissible legislative judgment. As Mr. Justice Holmes said in *Louisville Gas Co.* v. *Coleman*, 277 U.S. 32, 41 (1928):

> "[W]hen it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark." [249]

[249] If the Court should nevertheless conclude that Chapter 95 invidiously discriminates against new parties by permitting them to receive assistance only if they win five percent of the vote in the preceding or the current election, it should not invalidate all of Chapter 95. 26 U.S.C. § 7852(a) (separability clause). It should hold the statute unconstitutional only to the extent that Section 9004(a)(3) bars proportional pre-election financing to a party that received some votes but less than five percent in the preceding presidential election and to the extent that it bars proportional post-election financing to a party that receives some votes but less than five percent in the current election.

The fact that striking the exclusions for new parties would expand the coverage of Chapter 95 is not an obstacle to severability. It is well established that a court, on holding a statute unconstitutional in part, can expand the scope of the statute if the expansion will cure its legal infirmity and promote the major purpose of Congress. As Mr. Justice Harlan said, concurring in *Welsh* v. *United States*, 398 U.S. 333, 361 (1970):

> "Where a statute is defective because of underinclusion there exist two remedial alternatives: a court may either declare it a nullity and order that its benefits not extend to the class that the legislature intended to benefit, or it may extend the coverage of the statute to include those who are aggrieved by exclusion. Cf. *Skinner* v. *Oklahoma*, 316 U.S. 535, 543 (1942); *Iowa Des-Moines National Bank* v. *Bennett*, 284 U.S. 239 (1931)".

See also Developments in the Law—Equal Protection, 82 Harv. L. Rev. 1065, 1136-37 (1969). The Court has applied this principle in many cases, cost recently in *Weinberger* v. *Wiesenfeld*, 43 U.S.L.W. 4393 (March 19, 1975) (extending social security benefits to widowers after holding that their exclusion was unconstitutional). *See also Neal* v. *Delaware*, 103 U.S. 370 (1880); *Sweatt* v. *Painter*, 339 U.S. 629 (1950). In this case, the legislative purpose would clearly

4. *Chapter 95 Provides Realistic Alternative Means of Financing Third Party Presidential Campaigns*

Appellants argue that receiving money before the election is better than receiving it after the election. However, if—as the Court held in *Jenness*—electoral success may be used as a measure of public support, it is impossible to assist a new party on the basis of such a measure until after the votes have been counted. Congress has provided that both major and minor parties will receive assistance before the election to the extent that their entitlements can be calculated on the basis of past election results. The same obviously cannot be done for a new party. Nor is it feasible for this purpose to use such alternative measures of support as petition signatures or public opinion polls, as the court of appeals (Ct. App. Op. 1563-64) and the United States (*Amicus* Br. 101 n.63) have agreed. The best that can be done is to provide assistance *after* the election based on the new party's performance, in order to enable the party to repay loans and contributions—thus, incidentally, building further goodwill with its supporters. Equal protection of the laws cannot require greater equality than is feasible.

Appellants attempt to distinguish this Court's ballot access decisions. They assert that "there is only one route by which a prospective candidate can reach the goal of obtaining general election federal subsidy money before the November election" (Br. 159), and conclude that the absence of "two alternative routes to reach the goal" violates the equal protection standards established by this Court in *Jenness* and *Lubin* v. *Panish*, 415 U.S. 709 (1974). The purported distinction is fallacious.

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be better effectuated by extending payments proportionately to new parties than by invalidating the entire system of financing presidential general election campaigns.

First, what this Court said in *Jenness* and *Lubin* was that the state must provide a realistic alternative means of access to the ballot where the state has *restricted such access*, by requiring a specified previous electoral performance or filing fee. Chapter 95, on the other hand, provides only affirmative assistance; since it does not restrict electoral opportunities, it need not provide alternative routes to surmount any restrictions. The provisions of Chapter 95 in no way "burden either a minority party's or an individual candidate's . . . important interest in the continued availability of political opportunity." *Lubin* v. *Panish*, 415 U.S. at 716. Chapter 95 can be regarded as restrictive only if one mistakes the objective of presidential candidates. Appellants allege that "the candidate's goal is to obtain the general election federal subsidy . . . ." Br. 159. But federal money is no more an objective of presidential candidates than any particular means of ballot access was an objective of the Georgia candidates who brought *Jenness*. The Georgia candidates wanted access to the ballot by whatever means, just as presidential candidates want access to sufficient funds, by whatever means, to fuel an effective campaign. Chapter 95 does not reduce the number of paths to that goal; it adds one—federal assistance.

Second, Congress has provided alternative paths even to obtain federal assistance. They are the same "alternative routes" specifically provided in *Jenness*. 403 U.S. at 440. A candidate may choose either to fight and win the nomination of a major party or to fight independently to gain the support of five percent or more of the electorate—"neither of which can be assumed to be inherently more burdensome than the other." *Id.* at 441. A

candidate who chooses the latter route receives federal payments at the earliest opportunity after he has demonstrated sufficient support. And the prospect of federal assistance after the election should be very useful to a new party that has a realistic prospect of getting a sizable vote. Governor Wallace's 13.5 percent showing in the 1968 presidential election did not come as an election-day surprise; it had been predicted by public opinion polls and political experts well before the election. A new party with such prospects of success will find its ability to obtain commercial credit and loans to finance a campaign enhanced by the prospect of federal assistance in repaying the loans after the election. Political supporters can be asked to contribute by making loans up to $1,000 for individuals—$5,000 for qualified committees—repayable after the election. In addition, ordinary bank loans are available without regard to the contribution limits in Section 608.[250] Therefore, even for a new party, Chapter 95 provides a measure of financial assistance before, and not merely after, an election.

There is a final and decisive point with respect to the "discrimination" allegedly resulting from the alternative

[250] The challenged statutes expressly permit candidates to receive, without limitation, any "loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business." 18 U.S.C. § 591(e). Such loans are also excluded from the prohibition of any "contribution" by a national bank. 18 U.S.C. § 610. The legislative history of these provisions indicates that Congress intended all parties, including new parties, to be free to finance their campaigns by ordinary bank loans in any amount, except that loans made only on an endorsement or guarantee are considered to be contributions by the endorser or guarantor, subject to the contribution limits. *See* S. Rep. No. 229, 92d Cong., 1st Sess. 59, 121 (1971); 117 Cong. Rec. 43385-86 (1971). Even before these provisions were inserted in Sections

paths created by the public financing provisions. When public financing is considered together with the other features of these laws, it is clear that minor and new parties will find their financial positions enhanced relative to major parties. As the court of appeals said, "it should be borne in mind that smaller parties are likely to be the major beneficiaries of another part of the statutory scheme, the expenditure ceilings." Ct. App. Op. 1564. They will also benefit from the contribution limits. *See* Part V, *supra*.

In the 1972 presidential election, each of the major party candidates had no trouble raising more than $20 million of private funds before the election. The Democratic candidate raised $38 million; the Republican candidate raised $60 million. Findings IIA, ¶ 71, IIB J.A. 457. Even if the excess over $1,000 of each contribution had been eliminated, the Democratic and Republican candidates would each have raised over $24 million. *Id.* ¶ 72, IIB J.A. 457. Minor and new party candidates in the aggregate raised $1,043,000 in 1972; eliminating the excess over $1,000 of each contribution, they would have raised $977,000.[251] That is only one percent of the $98 million raised by the major party candidates.

In 1976, neither the Republican nor the Democratic candidate may spend more than $20 million in the general

591(e) and 610, bank loans were made to finance political campaigns. *See e.g., United States* v. *First National Bank*, 329 F. Supp. 1251 (S.D. Ohio 1971).

[251] Findings IIA, ¶¶ 71, 72; IIB J.A. 457. This figure is not significantly less than the $1,043,000 actually raised by minor and new parties because, as we have shown, they rely much less than major parties on large contributions. *See* pp. 113-18, *supra*.

election, whether in public or private money. If minor and new party candidates raise only the same amounts in 1976 as they did in 1972, they will be proportionately much better off financially compared to the major parties. Their spending as a percent of the $40 million the major parties may spend in the general election will be 2.5 percent, or more than double the 1972 figure. The additional fund-raising ability they should have because of the possibility of receiving federal assistance after the election may enable them to do even better. The result appears to bear out the prediction of Professor Rosenthal:

> "If [third parties] were treated generously even though not equally, it might be shown that they were in fact accorded a better chance to convey their views to the voters than if all parties were dependent solely on private contributions." [252]

Thus, despite appellants' protestations, the court of appeals rightly concluded that "third party and independent candidates are now in a better position to approach the spending levels of the major parties." Ct. App. Op. 1564. Appellants have failed to show that the alternative routes to presidential campaign financing provided by Chapter 95 "discriminate" against minor or new parties.

5. *No Other Financing Mechanism Has Been Shown to Provide a "Less Restrictive Means"*

Appellants suggest that there are less restrictive means of providing public financing. Of course, they carefully

[252] Rosenthal, *supra* note 218, at 416. *See also* Affidavit of James MacGregor Burns, *supra* note 58, ¶ 11.

refrain from endorsing any of the alternatives they advance. Moreover, they offer their alternatives without meaningful elaboration or analysis.

Alternatives are always offered when a new and complex legislative program is debated. Adherents of particular proposals always assert that their method is the most effective, the least restrictive, or the sole constitutional means of attaining the legislative objective. For example, appellants assert that "many of the difficulties created by subtitle H . . . can be avoided by a 'voucher' scheme," in which the Government would distribute subsidy vouchers directly to individuals, who would in turn contribute the vouchers to the candidates of their choice. Appellants' Br. 151. Appellants ignore the obvious defects of such a scheme.[253] The voucher system could focus enormous political power in organized groups able to collect vouchers quickly and efficiently, tempting such groups to use coercion or other unacceptable means to aggregate their voucher strength. Since vouchers would be the equivalent of money, a "black market" might develop in which vouchers would be bought from voters at a discount by political candidates or committees or by intermediaries. A voucher system would impose an enormous administrative and financial burden, estimated by one proponent at $50 million if public financing were extended to all federal elections.[254] A voucher system would not, like direct federal grants, permit a candidate to know when he will

[253] *See, e.g.*, American Bar Association Special Committee on Election Reform, Symposium on Campaign Financing Regulation 103-14 (1975); J. Kirby, Congress and the Public Trust, Report of the Association of the Bar of the City of New York Special Committee on Congressional Ethics 131 (1970). The *Report* concludes that "the direct Federal subsidy seems preferable to the other choices." *Id.*

[254] ABA Special Committee Symposium, *supra* note 253, at 103-04.

receive the federal aid; the timing would hinge on the decisions of millions of voucher holders.

The leading congressional advocate of the voucher plan, Senator Metcalf, has filed a brief *amicus curiae* of which one paragraph (Br. 48) is devoted to these frequent criticisms, most of which had been raised below. He asserts that many of the difficulties could be "averted by . . . harsh criminal penalties." As to the randomness in the timing of receiving vouchers, this "presumably is a matter over which the candidate enjoys some control." *Id.* Other proponents of the voucher plan have responded to these criticisms by formulating increasingly complicated schemes. The latest is a "modified voucher system" supplemented by "private giving" and involving both "flat and proportional grants." D. Adamany & G. Agree, *supra* note 44, at 199. Despite its novelty, this proposal has already itself been criticized. T. Schwartz, Public Financing of Elections: A Constitutional Division of the Wealth 87 (1975). The current dispute over the voucher system illustrates the difficult policy questions underlying the selection of the most effective, least restrictive system of public financing—and offers further reason for deferring to the judgment of Congress.

The other alternative suggested by appellants is "a tax checkoff system that would allow taxpayers to designate their choice of candidates or parties . . . ." Appellants' Br. 163. Congress rejected that alternative because, at the time when income tax returns are filed on April 15, it is impossible to know who the nominees will be, and accordingly such a provision would discriminate primarily against third parties. As Senator Pastore explained:

> "So, what happens? When you attempt to designate your party, you are doing that by April 15,

> 1972.[255] That is the last day to file the income tax return. How do you know if McCarthy will run? How do you check him off? What do you do for him? . . . . But let the Senator tell me how we handle the situation where the known candidate will get the checkoff and those not yet known cannot get the checkoff because the taxpayer does not know who he is yet or what party he will represent yet. What do we do about that?
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> "What concerns me is what do we do about minority parties? Take the Wallace candidacy. Whether you like him or not, whether you vote for him or not, he has a right as an American to run. He has a right to be treated like everyone else. That is what you are trying to do. By the same token, someone else might come along and file in a certain number of States whereby he becomes qualified on the presidential ballot. He is a candidate no one ever heard of on April 15 because he does not file until May, June or July, and he was out of the picture completely then. What happens to him?
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> "Where is the equity? That is what disturbs me." 117 Cong. Rec. 42376 (1971).[256]

Thus appellants' "far less discriminatory" system (Br. 163) may in fact be more discriminatory.

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[255] Senator Pastore might have added that the fund is built up in annual increments over the four years between presidential elections, and that the taxpayer's quandry in 1969, 1970, and 1971 would have been worse than in 1972.

[256] In fact, Chapter 95 as enacted in 1971 included a mixed system in which a taxpayer could make a party designation. *See* Pub. L. No. 92-178, § 802(a), 85 Stat. 573. This provision was removed in 1973, Pub. L. No. 93-53, § 6(a), 87 Stat. 134, both for the reasons stated and because "it seems inappropriate for the person examining a tax return to know the taxpayer's political affiliation." 119 Cong. Rec. 22396 (daily ed. June 29, 1973) (remarks of Rep. Mills); *accord, id.* at 22598 (June 30, 1973) (Sen. Long).

The United States as *Amicus* asks whether a system of matching funds similar to that provided for presidential primary elections under Chapter 96, discussed below, could be used for general elections as well.[257] But matching grants in the general election might act as an artificial incentive to entry by additional candidates, after the party primary and nominating processes, thus encouraging the splintering and proliferation of parties. In primaries, multiple candidacies have been a common facet of American political life; in general elections, they have been much less so. Congress had reason to fear that a new incentive for multiple parties in general elections might threaten the nation's political stability. Because of the inherent differences between primary and general elections, Congress adopted differing financing mechanisms in order to prevent the distortion of either process. *See, e.g.*, S. Rep. No. 689, *supra* note 35, at 5-9. Moreover, a matching system is subject to some of the same uncertainties in timing associated with the voucher plan; the court of appeals concluded it was "a more cumbersome system" than the approach of Chapter 95. Ct. App. Op. 1564.

Even more importantly, a matching system would not accomplish the congressional objective of taking the first experimental step toward eliminating dependence on private contributions in federal election campaigns. *See, e.g.*, S. Rep. No. 689, *supra* note 35, at 4-5. And there is powerful logic for the compelling need to attain this goal:

> "The last decade has made ever clearer the determination of the Court to insure that political opportunity and influence are allocated equally among all our citizens. Any reasonable legislative policies which breathe reality into that opportunity, and which diminish inequalities in the exercise of political influence, serve vital constitutional goals, repeatedly sanctioned by the Court.
>
> "The attainment of those goals depends primarily on eliminating the use of privately donated money in campaigns. In no other way can government be opened to participation by all segments of the population, giving talented poor people for the first time a genuine chance to compete for office. In no other way can public policy-making be insulated from skewing by private interest. In no other way can the electoral balances be immunized from the effects of differential wealth distribution in the society as a whole." [258]

An alternative such as matching grants, which moves only part way toward the elimination of dependence on private money—and which Congress expressly rejected as inappropriate for presidential general elections—cannot be regarded as a "less restrictive" solution to the compelling need.

In this case, there simply is no readily apparent less restrictive means of accomplishing the legitimate legislative ends. This is not a case in which the legislative objectives could be met by straightforward and plainly workable adjustments such as reducing the durational

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[257] United States *Amicus* Br. 100-01. Appellants are presumably constrained from suggesting such a proposal by their view (Br. 164-68) that this system is unconstitutional as well.

[258] Fleishman, *supra* note 218, at 415. *Accord*, D. Adamany & G. Agree, *supra* note 48, at 43-44. For similar reasons, a prominent economist has termed these public financing provisions "the most important law passed in 1974." A. Okun, Equality and Efficiency: The Big Tradeoff 24-25 (1975).

residency requirement [259] or shortening the period of time required to switch political affiliation.[260] The suggestion of less restrictive alternatives in this case is simply an attempt to debate again in this Court the difficult issues of legislative policy already resolved by the Congress. We agree with the United States as *Amicus* that:

> "It is, of course, for Congress to decide what to adopt as a compromise among the interests of the major and minor parties, taking into account the need for reasonable administrative feasibility and the interest in protecting the Treasury against raids by candidates without prospect of success. If more than one solution is constitutionally acceptable, the choice of Congress must be respected." United States *Amicus* Br. 102.

6. *The Ten-State Eligibility Requirement Is Not Invidiously Discriminatory*

Chapter 95 gives assistance to a minor or new party candidate who has established a broad base of public support by qualifying to have his name listed on the ballot in ten or more states. 26 U.S.C. § 9002(2)(B). This eligibility requirement serves an important interest in reserving federal resources for candidates who appeal to a national rather than a local constituency and are thus serious contenders for the Presidency.

While a "favorite son" or other candidate having strictly local appeal may serve a variety of legitimate

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[259] *Compare Dunn* v. *Blumstein*, 405 U.S. 330, 348, 353 (1972); *with Burns* v. *Fortson*, 410 U.S. 686 (1973); and *Marston* v. *Lewis*, 410 U.S. 679 (1973).

[260] *Compare Kusper* v. *Pontikes*, 414 U.S. 51, 59 (1973); *with Rosario* v. *Rockefeller*, 410 U.S. 752 (1973); *see Storer* v. *Brown*, 415 U.S. 724, 761 (1974) (dissenting opinion of Brennan, J., joined by Douglas and Marshall, JJ.).

political functions, Congress may permissibly conclude [261] that those functions are not of sufficient national importance to entitle a candidate to a federal subsidy. Congress thus required that a candidate meet the qualification requirements of ten states before receiving assistance.

There has been no showing that this ten-state requirement is unreasonably high or discriminatory. Victory in the electoral college requires the votes of the 11 largest states or the 40 smallest states. Findings I, ¶ 51, IIA J.A. 26. Thus, Congress has not even required a candidate to show that he has support in a group of states that constitute a majority of the electoral college, as it might have done.[262] The ten-state figure merely requires a candidate to show that his support has *some* substantial breadth.

Absent a showing that this requirement works undue hardship on any candidate, such a matter of line drawing is reserved for legislative judgment.[263] No appellant has alleged or shown that he will even be affected by this requirement. McCarthy is the only appellant who is a presidential candidate, and it is far too early to tell whether he will qualify in ten or more states.

7. *"Independent" Candidates Are Not Denied General Election Funding*

Appellants asserted below that Chapter 95 provides assistance only to candidates of "political parties," while appellant McCarthy is an independent candidate affiliated with no party. Even if correct, that assertion would show

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[261] *See* 120 Cong. Rec. S5840 (daily ed. April 11, 1974) (remarks of Sen. Allen).

[262] *Cf. Bode* v. *National Democratic Party*, 452 F.2d 1302, 1309 (D.C. Cir. 1971), *cert. denied*, 404 U.S. 1019 (1972).

[263] *See* discussion at pp. 231-33, *infra*.

no injury to McCarthy; he has already announced that he will not accept public financing. Findings III, McCarthy ¶ 30; IIB J.A. 718; McCarthy Deposition Tr. at 89-90.

Moreover, appellants misread the statute. It is true that the general election funding provisions speak of assistance only to candidates of major, minor, or new "parties." 26 U.S.C. §§ 9003, 9004. But Subtitle H contains no definition of the term "party." "Major" and "minor" parties are defined by their success in the last election, and a "new party" is "a political party which is neither a major party nor a minor party." *Id.* § 9002 (6), (7), (8).

The FECA and FECA Amendments, companion legislation to Subtitle H, define the term "political party" to include "any association, committee, or organization which nominates a candidate for election to any federal office whose name appears on the election ballot as the candidate of such association, committee or organization." 2 U.S.C. § 431(m); 18 U.S.C. § 591(i). Relying on that definition, the court of appeals held that there is "ample room for the Commission or the officials in charge of disbursing funds to find that even informal committees formed to support independent candidates for President constitute political parties for the purposes of Chapter 95." Ct. App. Op. 1570.[264] McCarthy's group may thus qualify as a "party" if he obtains a ballot position under state law. As the court of appeals said:

[264] McCarthy's "informal committee," the Committee for a Constitutional Presidency—McCarthy '76, is already a registered political committee under the FECA. Findings III, Monroe ¶3, IIB J.A. 719. And the Commission is specifically addressing the definition of "new party" in its pending rulemaking proceeding. 40 Fed. Reg. 23833 (June 2, 1975) (Item II-G). *Cf.* Appendix A, p. 2a, *infra.*

> "Until it is shown that a narrower definition is being applied, to the detriment of independent candidates who would otherwise qualify, we are in no position to invalidate the public financing provisions of the statute." Ct. App. Op. 1570.

8. *The Provisions for Financing Conventions Are Not Invidiously Discriminatory*

Chapter 95 authorizes federal payments for major and minor party nominating conventions.[265] Appellant McCarthy argues that such payments invidiously discriminate against him because he obtained the nomination of the Committee for a Constitutional Presidency—McCarthy '76 without a convention and cannot take advantage of the convention assistance. Appellant Libertarian Party asserts a right to convention funding notwithstanding its diminutive size. *See* Findings III, Crane ¶¶ 2-11, IIB J.A. 750-52. The arguments have no substance. They ignore the inherent differences among various types of political movements and the fact that "the grossest discrimination can lie in treating things that are different as though they were exactly alike." [266]

A political movement formed around one person, as McCarthy's apparently is, plays a different role from either a major party or a minor party that has shown

[265] Congress found that:

> "Although many of the campaign finance abuses have occurred in connection with presidential general elections, the influence or potential influence of big money is as great in all phases of presidential elections.
>
> "For example, major political parties have come to rely heavily on large corporations and labor unions to pay for advertisements in convention programs to meet the expenses of nominating conventions." H.R. Rep. No. 1239, *supra* note 56, at 14.

[266] *Jenness* v. *Fortson*, 403 U.S. 431, 442 (1971).

substantial support and fields candidates for a number of different offices. The same is true of the Libertarian Party, which has held one convention in the past, at an expense of $1,423.91. Findings III, Crane ¶ 11, IIB J.A. 752. As shown above, the Court has repeatedly held that election laws may make reasonable distinctions based on these differences in political life.

For example, the Texas law upheld in *American Party* v. *White*, 415 U.S. 767 (1974), required parties of a certain size to hold primary elections, all parties to hold conventions, and independent candidates to file nominating petitions. In upholding that law, the Court held that a state does not violate the First Amendment or deny equal protection by enacting regulations that recognize the inherent differences among types of political movements. Chapter 95 is less restrictive than that law. Parties remain free to choose their methods of nominating candidates, and candidates remain free to enter primaries, compete at conventions, or form their own political organizations. There is nothing discriminatory in recognizing the public functions traditionally served by conventions and primaries and providing assistance for them without similarly compensating independent candidates who choose to eschew these traditional avenues to election, or parties that have failed to demonstrate substantial public support.

Indeed, *American Party* puts to rest appellants' discrimination arguments with respect to convention funding under Chapter 95 and primary funding under Chapter 96, discussed below. Besides regulating party organization, the Texas law upheld there provided state financing for the conduct of primary elections, which only parties above a certain size were permitted or required

to hold. No financing was provided for conventions, which all parties were required to hold and at which smaller parties nominated their candidates. 415 U.S. at 793. The Court rejected the argument that financing only primaries discriminated against the smaller parties. It said:

> "[W]e cannot agree that the State, simply because it defrays the expenses of party primary elections, must also finance the efforts of every nascent political group seeking to organize itself and unsuccessfully attempting to win a place on the general election ballot." 415 U.S. at 794.

Appellants seek—as they must—to distinguish *American Party*. They assert (Br. 165) that the Texas statute was different because it financed election costs rather than campaigning costs, and because Texas simply took a "different route to funding election-day expenses than other states. . . ." But the public financing of primaries in *American Party* was of undoubted assistance in generating publicity, strengthening party loyalty and support, and otherwise laying the groundwork for a successful general election campaign. And it permitted the benefited parties to husband their funds, while the "minority parties . . . . must undergo expenses . . . in holding their conventions and accumulating the necessary signatures to qualify for the ballot. . . ." 415 U.S. at 793-94. Nevertheless, this Court was "not persuaded that the State's refusal to reimburse for these expenses is any discrimination at all against the smaller parties and if it is, that it is also a denial of the equal protection of the laws within the meaning of the Fourteenth Amendment." *Id.* at 794.

F. The Primary Matching Provisions of Chapter 96 Are Likewise Constitutional

Chapter 96 provides federal assistance to candidates in presidential primaries. The problem of determining which candidates should receive federal assistance is different in the case of primaries than it is in general elections. Each candidate in a general election has sought and obtained the nomination of his party or has formed his own organization outside the existing parties. Therefore, the tests used to determine who will receive assistance and how much he will receive can be cast in terms of the electoral support enjoyed by the parties—either in the preceding election or (where that is not possible) in the current election. However, the range of primary candidates is virtually unlimited, and any test of the seriousness of a candidacy must be applied to the candidate himself rather than his party. *See* S. Rep. No. 689, *supra* note 35, at 5-6.

The mechanism Congress devised to allocate primary assistance to candidates who have sufficient popular support is federal matching of small private contributions. A candidate who satisfies the initial eligibility requirements, discussed below, is entitled to federal assistance based on the amount he is able to raise privately in contributions of $250 or less. This mechanism allows individual citizens to indicate by their contributions which candidates are most worthy of federal assistance.

1. *Chapter 96 Does Not Enhance but Greatly Reduces the Disproportionate Power of the Wealthy To Influence Primary Elections*

Since the Government will match only the first $250 of any contribution, the matching mechanism does not permit the wealthy to have disproportionate influence

in choosing the recipients of federal assistance. Appellants assert that federal matching of contributions up to $250 "gives wealthy people a considerable advantage." Appellants' Br. 167. But Subtitle H replaces a system of wholly private presidential campaign financing in which contributions of $250,000 or more were not uncommon. In 1972, 194 individuals contributed $50,000 or more each to presidential candidates, for a total of $27 million.[267] As we have shown, Congress did not deny equal protection by remedying the major part of the problem.

2. *Matching Is a Permissible Mechanism To Allocate Federal Assistance*

The Constitution permits Congress to employ a matching mechanism. The same compelling interests that justify using a reasonable, objective formula to determine how much assistance candidates will receive in the general election apply equally in the case of primaries. The cases discussed above confirm that Congress, which may deny assistance altogether to candidates who do not evidence "a significant modicum of support," [268] may also provide differential assistance to candidates based on an objective measure of their support among the electorate. The amount raised by a candidate in small contributions provides such an objective measure. Since only small contributions are matched, the amount thus raised evidences the degree of seriousness of support that Congress is entitled to demand.

Matching grants, of course, are a common means of allocating assistance in other federal subsidy pro-

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[267] H. Alexander, *supra* note 63, at 648.

[268] *Jenness* v. *Fortson*, 403 U.S. 431, 442 (1971).

grams.[269] As used in such programs, the matching mechanism serves the same function it does in Chapter 96: to ensure that the project is sufficiently worthy to have attracted other support before federal assistance is provided.

In this respect, matching payments under Chapter 96 will be functionally identical to the credits and deductions for political contributions authorized by the Internal Revenue Code.[270] When an individual who has contributed to a campaign receives a credit or deduction that reduces his income tax liability, the Government in effect makes part of the contribution through its loss of tax revenue. The Internal Revenue Code gives such credits or deductions for a wide range of purposes—even in areas where the Government could not subsidize directly, such as contributions to religious organizations.[271] Such tax incentives are of unquestionable constitutionality.[272] A matching mechanism, like a tax incentive, has the advantage

> "that it permits the realities of the campaign—the relative importance of the major versus the minor candidates—to be reflected through the separate decisions of millions of taxpayers, thus relieving the government of the necessity and the onus of making those decisions itself." [273]

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[269] *E.g.*, 23 U.S.C. § 120 (1970) (Highway Trust Fund); 49 U.S.C. §§ 1701-03, 1711-27 (1970) (Airport and Airway Development Act); 42 U.S.C. § 1857(c) (1970) (Clean Air Act).

[270] 26 U.S.C. §§ 41, 218, discussed at p. 187, *supra; see* Rosenthal, *supra* note 218, at 420.

[271] *See* 26 U.S.C. § 170 (1970); *Cf. Walz* v. *Tax Comm'n*, 397 U.S. 664 (1970) (upholding exemption of church real estate from property taxes).

[272] *See* authorities cited in note 218, *supra*.

[273] Rosenthal, *supra* note 218, at 418.

Matching has the additional advantage of being more progressive than tax incentives, because small private donations are matched dollar for dollar regardless of the donor's income, while the benefits of a tax incentive depend on the donor's tax bracket.

3. *The Eligibility Requirements Serve a Compelling Interest in Limiting Assistance to Serious National Candidates*

Chapter 96 gives assistance to a primary candidate who has established a broad base of public support by raising $5,000 in contributions (counting only the first $250 of contributions from any person) in each of 20 states. 26 U.S.C. § 9033. This eligibility requirement serves two functions.

First, it requires a candidate, before receiving any federal assistance, to establish that he has a substantial level of public support—at least 400 individuals willing to donate $100,000 in contributions of $250 or less. The right of Congress to impose such a requirement in order to avoid stimulating an artificial proliferation of candidates and to prevent waste of federal revenues is established by *Jenness*, *American Party*, and *Storer*, discussed above.

Second, like the ten-state requirement for general election assistance under Chapter 95, it limits federal financing to candidates who have shown popular support in a number of states. It serves an important interest in reserving federal resources for candidates who appeal to a national constituency and are thus serious contenders for the Presidency. Absent a showing that an unreasonable burden is imposed on any candidate, Congress may require that candidates show support in 20 states—

equivalent to a minimum of 89 electoral votes—before receiving assistance in presidential primaries.

Moore v. *Ogilvie*, 394 U.S. 814 (1969), relied on by appellants, held only that an Illinois statute requiring independent candidates to obtain 200 petition signatures in each of 50 counties was invalid where 52 percent of the state's voters lived in a single county and 93 percent of them lived in the 49 most populous counties. *Id.* at 816. The law had the effect of preventing the 93 percent of the voters who lived in those 49 counties from forming a new political party and placing its candidates on the ballot, thereby improperly diluting their political power.

Moore does not apply to the requirement in Chapter 96 that candidates for a presidential nomination establish support in 20 states. For one thing, the extreme discrepancies in population among counties in Illinois are not matched by the variations among the populations of the 50 states.[274] More important, the candidates in *Moore* were seeking statewide offices that they could win by obtaining a majority of the statewide vote. By contrast, the President is not elected by nationwide popular vote but is chosen by the electoral college, where the states award their electors on a winner-take-all basis.[275] Therefore, "[c]ampaign strategy must be aimed at carrying states, not simply at increasing popular vote totals." Ct. App. Op. 1567. Since no candidate can win the Presidency without attaining a majority of the electoral college, Congress is entitled to reserve federal assistance

[274] California, the largest state, has only 9.8 percent of the nation's population, U.S. Census Bureau, 1970 Census of Population, Number of Inhabitants, Table 8, at I-48, while the largest single county in Illinois has more than 50 percent of the Illinois voters.

[275] U.S. Const. art. II, § 1, amends. XII, XXIII; *see Developments in the Law—Elections*, 88 Harv. L. Rev. 1111, 1196-97 (1975).

for candidates who show support in a number of states. *See Bode* v. *National Democratic Party*, 452 F.2d 1302, 1308-09 (D.C. Cir.), *cert. denied*, 404 U.S. 1019 (1972).

Moreover, Chapter 96 is not, like the Illinois statute in *Moore*, a restriction on access to the ballot. Rather, as noted above, it is an amelioratory law designed to ensure that all nominees of serious national political movements will have the resources to run effective campaigns. Congress has not forbidden narrowly based presidential candidates to run; it has simply determined that such candidates do not serve a sufficient national function to merit federal financial assistance. Congress has substantial latitude in setting "limitation[s] on a reform measure aimed at eliminating an existing [financial] barrier to [effective candidacies]." [276]

The 20-state requirement has invigorated the early stages of presidential campaigns. Instead of quietly visiting a few financial "angels," prospective candidates for 1976 are touring the country seeking small contributions from large numbers of voters. And the money is coming in. At least eight presidential candidates have already reported qualifying for matching funds. *See* p. 123, *supra*. To date, the requirement has proven to be beneficial, not invidious as appellants contend.[277]

[276] *Katzenbach* v. *Morgan*, 384 U.S. 641, 657 (1966); *see San Antonio School Dist.* v. *Rodriguez*, 411 U.S. 1, 39 (1973); Fleishman, *supra* note 218, at 387.

[277] If the Court should nevertheless conclude that the 20-state requirement is invalid, it should merely strike that requirement, making matching funds available to candidates who have raised $100,000 in contributions of $250 or less. *See* note 249, *supra*.

4. *Financing of Primaries Does Not Discriminate Impermissibly Against Candidates Seeking Nomination by Another Route*

Appellants argue that federal financing of primary campaigns discriminates invidiously against candidates, like appellant McCarthy, who seek election by a route other than the primary. Like their attack on convention financing, this argument asks the Court to rule that Congress must be blind to the differences among routes to general election victory. Appellants' argument is based on the absence of federal financing to assist in defraying the "extensive expenditures of funds" required in seeking "ballot status in the various states." Appellants' Br. 164. Precisely this contention was rejected in *American Party* v. *White*, 415 U.S. at 792 n. 24. Indeed, Chapter 96 goes farther than the Texas law upheld there, for it assists candidates who seek nomination at a "nominating convention or caucus" as well as in a primary election. 26 U.S.C. § 9032(7).

Congress did not invent primaries or conventions as a means of conferring unfair advantages on those who participate in them. Both primaries and conventions are traditional means by which American political parties have long chosen their nominees. Federal law neither requires nor prohibits any primary election or convention. By assisting candidates who choose to run in primaries, Chapter 96 merely recognizes the public function served by primary elections [278] and attempts to ease the burden of participating in them.

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[278] *See United States* v. *Classic*, 313 U.S. 299 (1941); *Smith* v. *Allwright*, 321 U.S. 649 (1944); *Terry* v. *Adams*, 345 U.S. 461 (1953).

CONCLUSION

For these reasons, the decisions of the court of appeals and the district court should be affirmed.

Respectfully submitted,

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October 20, 1975

APPENDIX A

The Courts Below Properly Refused to Rely Upon The Statistical Evidence Offered By Appellants

The district court has made a series of findings based on statistical studies submitted by both the appellants and the nonfederal appellees (intervening defendants below). Both studies analyzed contribution and expenditure data extracted from the reports filed under the FECA of 1971. We submitted studies of the 1972 presidential election, all 1972 House and Senate elections, and all 1974 House and Senate elections, conducted by the Common Cause Campaign Finance Monitoring Project (the "Common Cause study"). Findings IIA, II J.A. 264-564.

Appellants submitted a study limited to expenditures in the 1972 Senate elections conducted by a graduate student, Roland J. Cole, for purposes of obtaining his dissertation [1] (the "Cole study"). Findings IIB, IIB J.A. 565-86.

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[1] The reception given Cole's dissertation by noted political scientists and experienced politicians cautions against reliance on its statistical methodology or its conclusions. At a series of meetings held at Harvard's Institute of Politics and John F. Kennedy School of Public Administration to discuss Cole's dissertation, the political science faculty and Institute fellows—many of whom are practicing politicians—heavily criticized the dissertation. Cole Deposition Tr. at 265-90. Although Cole refused to testify to certain aspects of these discussions (*id.* at 266-71), the following conclusions emerge from Cole's testimony.

First, "almost everyone present had at least some negative criticism of [Cole's] dissertation." *Id.* at 273. Cole's statistical methodology and vote—spending correlations received the severest criticism. There was general agreement that Cole's research "doesn't go far enough and [he] might have done some of the stuff differently . . ." (*id.* at 277), and that "more is needed before anyone will

The Cole study is based on a series of crucial mistaken assumptions. First, in determining the amount of expenditures by a candidate, Cole "includ[ed] funds which have been used to repay loans made to the candidate or his political committees. The use of the proceeds of those loans is considered a campaign expenditure and the repayment of that loan is considered a separate and additional campaign expenditure." Findings IIB, ¶ 2(d), IIB J.A. 569. The Cole assumption incorrectly *double counts* loans for purposes of determining how much was spent in the campaign, and thus inflates the spending figures relative to the spending limits.

The statutory provisions, 2 U.S.C. § 431(f) and 18 U.S.C. § 591(f), both state clearly that expenditures are limited to distributions, etc., "made for the purpose of influencing the nomination for election, or election. . . ." Even if loan repayments were thought to be for such a purpose—which they are not—surely it is impossible to regard *both* the expenditure of the loaned funds *and* repayment of the loan as within this definition. The Cole assumption—unsupported by the statute or its legislative history—would distort the practical effect of the expendi-

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have a complete answer for the relationship between money and votes . . ." (*id.* at 273-74). Cole "heartily agreed." *Id.* at 274.

A Harvard professor whose field is voting behavior concluded that Cole's discussion of the relationship between expenditures and votes "promise[d] a bit more than it actually delivered." *Id.* at 287-88. It was this part of Cole's dissertation which offered the questionable conclusion that "not only does the higher spending campaign win most of the time, its share of the votes cast is closely correlated with the share of the dollars spent." *Id.* at 289, citing Cole's dissertation at 80. The methodology underlying Cole's conclusion was criticized by John J. McGowan, an expert in statistical analysis, in an unchallenged affidavit. Affidavit of John J. McGowan, Ex. 3 to Response of Defendants and Intervening Defendants to Plaintiffs' Proposed Findings of Fact, ¶ 6. The district court found that several fundamental "reservations" attached to Cole's statement. Findings IIB, ¶ 73, IIB J.A. 585.

ture limits in a way Congress neither intended nor enacted. For example, if a candidate borrows $20,000, spends that money in the campaign, and then raises $20,000 to repay the loan, he has had $20,000 available for use in the campaign—not $40,000. Cole uses the $40,000 figure in determining campaign spending, and there is no question that it is the $20,000 figure that applies for purposes of the spending limit.

Second, Cole counted as general election expenditures amounts that would be counted as primary expenditures under the new law. Cole defined general election spending as including expenditures during the primary period where the candidate was unopposed in the primary, or where the candidate's opponent(s) received less than ten percent of the primary vote. Findings IIB, ¶ 2(a), IIB J.A. 568. However, the legislative history is very clear that an unopposed candidate in a primary can charge all his expenditures during the primary period against his primary spending limit and not count them against his general election limit.

When S. 3044, the Senate version of the FECA Amendments of 1974, was being debated in the Senate, it provided, in proposed Section 504(c), that: "[n]o candidate who is unopposed in a primary or general election may make expenditures in connection with his primary or general election campaign in excess of 10 percent of the limitation" on expenditures. Senator Cranston introduced an amendment, No. 1125, to strike the words "primary or" from this section of the bill. He argued at length that it would be unfair for an unopposed candidate in a primary election to be denied the opportunity to make the same expenditures—and thus gain the same level of recognition looking toward the general election—as his

opponents facing a contested primary in another political party. Senator Dole agreed with Senator Cranston, as did the Chairman of the Rules Committee, Senator Cannon. The amendment was accepted without objection, 120 Cong. Rec. S5701-02 (daily ed. April 10, 1974), and no later version of the legislation contained such a restriction. *See* 18 U.S.C. § 608(c).

The FEC has confirmed this reading of the statute. FEC Advisory Opinion 1975-9, 40 Fed. Reg. 36242 (Aug. 19, 1975).[2] This means that Cole has included substantial amounts in his calculation of general election spending which will be treated as primary spending for purposes of the new law, and his general election spending figures are thus erroneously inflated.

Third, Cole attempts to segregate the amount spent during a primary from the amount spent in a general election based on the reports filed under the 1971 FECA. Findings IIB, ¶ 2(a)-(c), IIB J.A. 568-69. Such segregation cannot be performed with any accuracy under the 1971 Act, because (1) it is impossible to determine from reports under the 1971 FECA whether payments made before or after the primary date were made for services provided before the primary, and (2) the timing of the reports leaves a period immediately before and after the primary date in which it is impossible to allocate reported expenditures. Cole himself admits that the 1971 reports do not permit one to determine accurately which expenditures made between a month before and a month

[2] The Commission has received a request for an advisory opinion whether the same result obtains for an independent candidate who runs in no primary but must spend to gain access to the ballot as an independent. FEC AOR 1975-53, 40 Fed. Reg. 40678-79 (Sept. 3, 1975). We believe such a candidate may spend up to the primary ceiling during the period before the party primaries. *See* pp. 223-25, *supra*.

after a primary were made for the general election, and that candidates tended to report an expenditure on the basis of the date when it was made without regard to whether it was related to the primary or general election. Cole Deposition Tr. at 50-55, 63-67. Appellants concede as much. Appellants' Br. at A2.

The Common Cause study on which we rely avoids Cole's mistaken assumptions in the following ways. First, where loans are received by the candidate or his political committees, the use of the proceeds of these loans is considered a campaign expenditure, but the repayment of that loan is not considered a separate and additional campaign expenditure. Findings IIA, ¶ 2(a), IIA J.A. 267. This avoids the inflated double-counting contained in the Cole study.

Second, the Common Cause study follows the legislative history and the Commission ruling establishing that a candidate is free to spend the full expenditure limit for the primary period, regardless of whether he faces primary opposition.

Third, the Common Cause study does not attempt to segregate primary expenditures from general election expenditures, since this cannot be done with any accuracy from the reports filed under the 1971 FECA. Findings IIA, ¶ 2(b), IIA J.A. 267. Instead, it compares total campaign expenditures for each candidate to the combined primary and general election expenditure limits under the new laws. This is the only meaningful and accurate comparison that can be made from the reports filed in 1972 and 1974 under the FECA.

Appellants argue that the combined overall limit is a misleading measure because some candidates had only one serious contest. Appellants' Br. at A2-4. The fact that some candidates had only one serious contest does

not make it reasonable to conclude, as appellants have, that in such races the total amount spent during both election periods must be compared with the spending limit *for just one period.* The example appellants cite in fact belies their reasoning: In 1972, as appellants note, challenger Holtzman spent about $104,000 defeating a House incumbent in the primary and a major party opponent in the general election. Appellants speculate that, since the primary was a closer race than the general election, Holtzman may have made almost all of her expenditures in the primary—thus exceeding the $84,000 primary limit. On the contrary, Holtzman's reports reveal that her campaign made expenditures of over $43,000 after September 1, 1972—ten weeks after the primary. If even half of that $43,000 was spent to influence the general election, then her primary spending was below the $84,000 limit, and the Common Cause figures mislead no one.

Furthermore, as we have explained, the new law permits a candidate with no primary opposition to spend up to the primary ceiling during the primary period without counting it toward his general election ceiling. Even if some candidates in past election years have bunched their spending in the general election period, they will be free to adjust their spending to take advantage of the combined ceilings. Thus the overall limits are not misleading measures of the effect the FECA Amendments will have on candidate expenditures, but are rather the best available measure to predict their effects.

Appellants at one point questioned the treatment of loans in connection with the Common Cause study.[3] Ac-

[3] The questions did not involve the double-counting defect of the Cole study referred to above.

cordingly, certain important sections of this study, Findings IIA, ¶¶ 52-61, 91-92, IIB J.A. 451-54,461-62 were recomputed using the loan assumptions suggested by appellants; the additional computations show no material changes in relative impact. *See* Findings IIA, ¶ 115, IIB J.A. 473-74. Appellants' criticism (Br. A4) has thus been mooted.

Appellants attack the Common Cause expenditure figures as misleading on one other ground—that the figures are low as a guide to future spending because the reporting and disclosure requirements in these laws will increase the cost of fund-raising. *Id.* They give the example of Senator Tower's expenditure of $30,000 for computer processing of contributions and expenditures. However, appellants fail to state that Senator Tower spent $2.3 million in his 1972 campaign and that the $30,000 fund-raising cost is a mere 1.3 percent of that huge amount. Findings IIB, ¶¶ 3, 16, IIB J.A. 570, 576.

Thus, the Common Cause studies are based on accurate assumptions that make them the best available for purposes of this case. Moreover, in both 1972 and 1974, congressional candidates were given the opportunity to review and correct the campaign finance totals set forth for them by the Common Cause Monitoring Project (including their total contributions and total expenditures). The Monitoring Project has made public an enormous amount of campaign finance data during the past three years, dealing with thousands of candidates and hundreds of registered interest groups; it has rarely received any requests for correction of such campaign finance data following publication. Findings IIA, ¶ 1, IIA J.A. 264-66.

The Common Cause study, which is the basis of all findings in Part IIA of the district court's order (cited

as "Findings IIA"), therefore represents the most complete and best available collection of data. The court of appeals was correct in relying exclusively on the findings based on that study. Ct. App. Op. 1540 n.105.

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

Nos. 75-436 and 75-437

JAMES L. BUCKLEY, *et al.*,

Appellants,

v.

FRANCIS R. VALEO, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF OF THE APPELLANTS

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Federal Election Campaign Act of 1971, P.L. 92-225,
86 Stat. 3, 2 U.S.C. §§ 431, *et seq.* ..... *passim*

Federal Election Campaign Act Amendments of 1974,
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121 Cong. Rec. 21, 27, 32
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H.R. Rep. No. 92-84, 92d Cong., 1st Sess. (1971) 105

H.R. Rep. No. 94-552, 94th Cong. 1st Sess. (1975) 108

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*Hearings Before the Subcommittee on Privileges and
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House Doc. No. 94-231, 94th Cong., 1st Sess. (1975) 107

*Political Campaign Financing Proposals, Hearings
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S. Rep. No. 92-229, 92d Cong., 1st Sess. (1971) 105

S. Rep. No. 94-409, 94th Cong., 1st Sess. (1975) 98, 107, 109

Miscellaneous

Bittker, "Churches, Taxes and the Constitution,"
78 Yale L.J. 1285 (1969) 54

Broder, "The GOP's Financial 'Loophole,' " Washington
Post, Sept. 14, 1975, at B 6, col. 3 66

Casper, "Williams v. Rhodes and Public Financing
of Political Parties Under the American
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Chafee, *Government and Mass Communication* (1947) 58

Cole, *Campaign Spending in Senate Elections* (1975) 35

Consumer Price Index (U.S. City Average, All Items,
Series A), Department of Labor, Bureau of Labor
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Ely, "Flag Desecration: A Case Study in the Roles
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FEC Notice 1975-22, 40 Fed. Reg. 33817 (Aug. 11, 1975) 9

FEC Notice 1975-51, 40 Fed. Reg. 44698 35

40 Fed. Reg. 14, 35, 98, 99, 100, 101, 102

The Federalist. No. 10, Cooke ed. 1961 ..... 10, 11, 34

Freed, "This Time Everybody's Got a CREEP," The Washington Monthly (Nov. 1975) 31 82

Mahoney, *Actions Speak Louder* (1968) 6, 62

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Mazmanian, *Third Parties in Presidential Elections* (1974) 67

Mott, *American Journalism* (1950) 42

New York Times, Sept. 22, 1975, at 12, col. 2 ..... 39, 40

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New York Times, Oct. 25, 1975, at 44, col. 2 53

New York Times, Oct. 28, 1975, at 10, col. 2 51

Note, "Election Administration in New York City: Prunning the Political Thicket," 84 Yale L.J. 61 (1974) 62

Note, "State Campaign Spending Restriction Violates First Amendment," 49 Tulane L. Rev. 1146 (1975) 30

Pincus, "Making Campaign Rules Complex," Washington Post, Sept. 15, 1975, at A 22, col. 3 113

Pollak, "Judicial Power and 'The Politics of the People,' " 72 Yale L.J. 81 (1962) 12

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Reitman and Davidson, *The Election Process: Voting Laws and Procedures* (1972) 62

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Washington Post, Oct 19, 1975, at A 1, col 6 ..... 53, 69

Washington Post, Oct. 20, 1975, at A 1, col. 4 ..... 53, 70

Weaver, "Senate Rejects 'Slush Fund' Curb," New York Times, Oct. 9, 1975 108

Weaver, "Election Agency Set Back in House," New York Times, Oct. 23, 1975, at 1, col. 4 108

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

Nos. 75-436 and 75-437

JAMES L. BUCKLEY, *et al.*,

Appellants,

v.

FRANCIS R. VALEO, *et al.*,

Appellees.

ON APPEAL FROM THE
UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF OF THE APPELLANTS

INTRODUCTION

While this reply brief deals shortly with most aspects of the litigation, our treatment of the issues surrounding the appointment and powers of the Federal Election Commission is considerably more extensive for two reasons: First, there have been important developments respecting the FEC and its activities since the Court of Appeals opinion, and even since our main brief, which bear with particular sharpness on both appellees' "ripeness" arguments and on the substantive questions. Second, in the court below ap-

pellees took varying positions with respect to the Commission-related issues. We deferred full consideration of the various possible defenses in order not to burden this Court with material that might later become superfluous. The briefs filed in this Court by appellees and *amici* have justified this prudence.*

SUMMARY OF ARGUMENT

I.

Appellants clearly have the requisite standing to bring this action, notwithstanding the unclear arguments and highly selective distillation of the record presented by intervening appellees to the contrary. *Steffel* v. *Thompson*, 415 U.S. 452 (1974). This Court should decide the constitutionality of the challenged legislation now, rather than allowing its abridgment of essential freedoms to work their profound and pernicious effects on the American political system. *Dombrowski* v. *Pfister*, 380 U.S. 479, 491 (1965).

II.

Since limiting the contribution and expenditure of money for political purposes clearly implicates First Amendment freedoms, and given the positions asserted by the appellees, this Court is called upon to decide whether the rule

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* We will cite the other briefs filed in this case as follows: Brief for the Attorney General as Appellee and for the United States as *Amicus Curiae* — "AG Br. I"; Brief for the Attorney General and the Federal Election Commission — "AG Br. II"; Brief of the Federal Election Commission — "FEC Br."; Brief for the Intervening Defendants-Appellees — "IA Br."; Brief of Senators Hugh Scott and Edward M. Kennedy, *Amici Curiae* — "SK Br."; Brief for United States Senator Lee Metcalf, *Amicus Curiae* — "Metcalf Br."; the other *amici* briefs as appropriate; and our own main brief in this Court — "A. Br."

of such cases as *New York Times* v. *Sullivan*, 376 U.S. 254 (1964), which protect free and robust political debate, or the result in such cases as *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367 (1969), and *United States* v. *O'Brien*, 391 U.S. 367 (1968), which had previously been thought distinguishable from the *Sullivan* rule because of their special circumstances, shall govern omnibus regulation of the political process. The principles declared in *O'Brien* itself plainly require a different result here; here speech and conduct are not separable and the governmental interest is not "unrelated to the suppression of free expression." 391 U.S. at 367.

III.

Nothing appellees have brought forward indicates that the challenged legislation will have any substantial remedial impact on the abuses to which it is supposedly directed. Appellees have failed to show that "special interests" have been restrained; they have failed to show that corruption will be diminished to any significant degree; they have failed to show that campaign costs are "skyrocketing"; and they have failed to show that other remedies, more effective and less intrusive on constitutionally guaranteed freedoms, were not available.

IV.

Appellees fail to show why indiscriminate campaign expenditure limits are not unconstitutional. Nor are appellees able to rebut our contention that the expenditure limits discriminate in favor of incumbents and against challengers; their argument that our proof is "speculative" is all but a concession by them of what is basically a common-sense proposition. Appellees' inadequate use of election-financing statistics and their unwillingness to accept marginal-utility analysis only further reveal the weaknesses

of the positions they espouse. Expenditure limits are in effect regulations of the content of speech, because they discriminate against political newcomers and those with low name recognition. *Thomas* v. *Collins*, 323 U.S. 516 (1945); *Police Dep't of Chicago* v. *Mosley*, 408 U.S. 92 (1972).

V.

Despite their effort to read paid political advertisements out of the First Amendment's protection of press freedoms, appellees have in no way demonstrated any support for their specious attempt to distinguish between "personal activity" and other kinds of partisan political actions; their argument moreover defeats itself, since they admit the independent-expenditure limitation suppresses both. Congress had no evidence before it that any "loophole" in the FECA needed to be closed by means of 18 U.S.C. § 608(e). The First Amendment demands that "enforced silence" not be permitted on so speculative a basis. *Southeastern Productions, Ltd.*, v. *Conrad*, 43 L. Ed. 2d 448, 459 (1975); *Whitney* v. *California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring).

VI.

Appellees fail to justify their extreme position that Congress has virtually limitless power to regulate contributions to political candidates. Appellees' paternalistic arguments, if accepted, would drastically reduce the electoral opportunities of candidates challenging incumbent federal officeholders and newcomers to the political process. The pitifully inadequate evidence appellees adduce on the "seed-money" point cannot sustain their arguments. And they have completely failed to disprove the discriminatory effects of the challenged legislation in view of incumbent access to enormous perquisites of office.

Miami Herald Publishing Co. v. *Tornillo*, 418 U.S. 241 (1974); *Police Dep't of Chicago* v. *Mosley, supra.*

VII.

The inadequacy of appellees' response to our "establishment" argument concerning Subtitle H of the Internal Revenue Code (A. Br. 145-52), and the contradictions and obvious fallacies in their own briefs concerning the discriminations against minor and new parties and independent candidates, fully demonstrate the dangers of unconstitutional government entanglement in politics when direct federal payments to parties and candidates are employed. *Meek* v. *Pittenger*, 421 U.S. 349 (1975). If Subtitle H is not stricken down, Congress will continually debate the problem of "who gets what, when, and how" in federal political subsidies in concrete situations involving the highest potential for partisan abuse.

While no system of allocating funds directly to parties and candidates can be truly equitable, I.R.C. Chapter 95 is one of the more irrational and discriminatory methods that could be selected. *Williams* v. *Rhodes*, 393 U.S. 23 (1968). Minor parties will be thwarted at their inception or preserved after their popular support has dissipated. I.R.C. Chapter 96 is not having the salutary effects hypothesized by Congress; quite to the contrary, it makes money more rather than less critical in pre-convention presidential campaigning. Finally, appellees have failed to rebut our contention that Subtitle H grants unconstitutional discretionary power to the Secretary of the Treasury in the allocation of federal subsidies; indeed, appellees themselves anticipate that that power will be exercised in a way that may deny minor parties and independent candidates even the post-election pittances which the statute purports to guarantee them.

VIII.

Freedom of association clearly encompasses financial contributions to political campaigns. *Kusper* v. *Pontikes*, 414 U.S. 51, 56-57 (1973). This Court has protected lists of contributors from unwarranted disclosure, as it has similarly protected the membership lists of controversial organizations. *Bates* v. *Little Rock*, 361 U.S. 516, 519 (1960). Appellees have wholly failed to show that this case involves insufficient "chilling" of protected First Amendment rights. Nor have they even attempted to defend the sweeping overbreadth of the FECA disclosure requirements. See *United States* v. *Robel*, 389 U.S. 258, 265-66 (1967). Appellees stand wholly mute as to the uniquely burdensome and intrusive requirements of 2 U.S.C. § 434(e), requiring disclosure and reporting by individuals directly to the FEC when they make independent expenditures. See *Talley* v. *California*, 362 U.S. 60 (1960).

IX.

Since appellants, as active participants in the political process, are directly subject to FEC regulation and affected by it, and since the Commission's impact on politics has already been dramatic, appellants' challenge to the FEC's mode of appointment is clearly ripe, and they have the requisite standing to make it. *Glidden Co.* v. *Zdanok*, 370 U.S. 530 (1962); *Miami Herald Publishing Co.* v. *Tornillo*, 418 U.S. 241, 247 (1974).

The Commission, because of its method of appointment and Congress' reservation of veto power over its rules, is concededly an "arm of Congress" and can constitutionally do nothing Congress could not do directly. But Congress has no plenary power, exercisable other than "by Law," with regard to the federal electoral process, nor do the so-called historical "precedents" offered by the FEC support any

such argument. *Powell* v. *McCormack*, 395 U.S. 489 (1969). An agency charged with enforcing a critical area of substantive federal civil and criminal law through interpretative and substantive rulemaking, advisory opinions, investigations, hearings and civil-enforcement actions consists of officers of the United States; thus presidential appointment and Senate confirmation are constitutionally required. See *Watkins* v. *United States*, 354 U.S. 178 (1957) and *Quinn v. United States*, 349 U.S. 155, 161 (1955). Astonishingly, Commission counsel disavows powers which the Commission has already exercised and is exercising today. And Congress' vigorous use of its veto power to protect incumbent advantages vividly demonstrates why an arm of Congress may not be crowned czar, with vast discretionary power, over the political process.

Only an agency not under the thumb of Congress — a truly independent agency — can constitutionally enforce whatever federal election law may remain in force when this case is over. None of the blatantly political arguments advanced by the FEC can justify perverting the Constitution in the indefensible manner attempted here. The proper remedy is to terminate the Commission's existence, leaving Congress free to create a constitutionally proper enforcement agency if it so chooses.

ARGUMENT

I.

Appellees' Attempt To Persuade This Court To Forgo Fully Deciding The Constitutionality of the Challenged Statutes Has No Foundation In Law, and It Invites Disastrous Consequences.

A. *Appellants Have Conclusively Demonstrated That They Are Harmed by the Challenged Legislation.*

Appellants' standing to bring this action is challenged only with respect to the issues concerning the Federal Election Commission ("FEC"); that challenge is dealt with *infra*, pp. 86-90. Intervening appellees do, however, present a highly selective distillation of the record in an effort to show that appellants are not "harmed" by the challenged legislation (IA Br. 23-24). The point of their argument is unclear. Intervening appellees did not appeal the lower court's ruling that appellants have standing to bring this action, op. at 1528, 1582,[1] nor do they raise standing as a jurisdictional issue before this Court. The originality of intervening appellees' doctrine is thus exceeded only by its pointlessness. And it is clear that under the existing precedents appellants are, as the Court of Appeals correctly held, sufficiently directly affected by the challenged legislation that they may bring this suit. *Steffel* v. *Thompson*, 415 U.S. 452 (1974); *Civil Service Comm'n* v. *Letter Carriers*, 413 U.S. 548, 551-53 (1973); *Roe* v. *Wade*, 410 U.S. 113, 124-25 (1973); *Baker* v. *Carr*, 369 U.S. 186, 204 (1962).

Intervening appellees' incomplete version of the record includes a number of serious distortions and outright

[1] The opinion of the Court of Appeals has now been reported at 519 F. 2d 821. For consistency, appellants will in this reply brief continue to cite to slip opinion pages.

errors. Throughout their discussion of appellants, they refer to the allegedly few times that one or more of appellants have taken action which would today violate the challenged statutes. (See, *e.g.*, IA Br. 26, 27, 29, 30, 32.) But the contribution, expenditure and disclosure provisions of the challenged legislation need only be violated once to send to jail the person who chooses thereby to exercise his constitutional rights. Appellees also suggest that Eugene McCarthy and the Libertarian Party are not harmed by the federal-subsidy provisions for presidential elections because they would not accept such funding even if offered (IA Br. 33-34).[2] Under this novel theory of the First Amendment, no one is harmed by a government establishment of religion unless that person is willing for the government further to violate the First Amendment by supporting his own church as well. Obviously, appellants are harmed if their opponents in election campaigns receive federal subsidies for which they are ineligible. The suggestion to the contrary is frivolous.

Appellees appear to claim that because Stewart Mott has means of expression other than campaign contributions and independent expenditures, and because he is not "average" in his political and social activism, restrictions on his right of free speech are permissible (IA Br. 24) — a contention which, even if otherwise valid, would go to the merits rather than to standing. The availability of other outlets for speech is no justification for closing off an outlet which some may view as undesirable.[3] Mott, while exceptional, is far from unique. Even if he were, that would be

[2] Appellees ignore the Mississippi Republican Party, an element of a major political party which does intend to accept federal subsidies.

[3] See NLRB v Fruit & Vegetable Packers, 377 U.S. 58, 80 (1964) (concurring opinion of Justice Black, rejecting such an argument as similar to holding that "governmental suppression of a newspaper in a city would not violate the First Amendment because there continue to be radio and television stations").

a reason to accord him First Amendment protection, not to deprive him of it; the First Amendment protects the speech not only of the majority but of those who present different, controversial, and minority viewpoints. See *Cantwell* v. *Connecticut*, 310 U.S. 296 (1940).

In their attempt to minimize the effect of expenditure limitations upon the future campaigns of appellants Buckley and Steiger, appellees have used past campaign figures uncorrected for inflation and, in the case of Buckley, fictitious figures urged by them on the District Court but expressly rejected by it in its findings (IA Br. 28-30). The inflation rate from 1966 to 1974 is 52 percent.[4] Therefore, Representative Steiger's 1966 expenditure of approximately $64,000 is, in 1974, equivalent to $97,000. This is substantially in excess of the $84,000 limitation[5] in 18 U.S.C. § 608(c)(1)(E). The inflation rate between 1970 and 1974 is 27 percent.[6] Senator Buckley raised approximately $1.8 million, Findings III, Buckley 17, p. 5, App. II B-703, not the $1.4 million claimed by appellees (IA Br. 28). Corrected for inflation the $1.8 million becomes $2.29 million. The expenditure limitation for candidates for United States Senator from New York, based on 1970 allowances per eligible voter, is approximately $1.5 million. Thus Senator Buckley obviously exceeded the FECA expenditure limitations in his 1970 race.

It is thus clear that the challenged statutes prohibit activity in which the appellants have engaged in the past and

[4] Calculated from the Consumer Price Index (U.S. City Average, All Items, Series A), prepared by the Department of Labor, Bureau of Labor Statistics.

[5] Representative Steiger did not face primary opposition in 1966, Steiger dep. tr. 50; thus all of his expenditures were made and intended for general-election purposes, and there can be no question that the $84,000 limit is the correct one for comparison.

[6] See n. 4, *supra*.

activity in which they wish to engage in the future. Like the petitioner in *Steffel*, each appellant is thus placed "between this Scylla of intentionally flouting . . . [the] law and the Charybdis of foregoing what he believes to be constitutionally protected activity in order to avoid becoming enmeshed in a criminal proceeding." *Steffel* v. *Thompson*, 415 U.S. at 462.

B. *Settled Judicial Policy Dictates That This Court Should Consider the Challenged Legislation Now.*

Appellees appear to argue that this Court should abjure deciding the critical issues in this case until the challenged statutes have been in operation for some unspecified period of time (IA Br. 37-42; AG Br. II 15).[7] Moreover, and ironically, in attempting to justify the statute they are now asserting that one of its chief virtues is that it can be changed in the event it turns out to be undesirable (*e.g.*, IA Br. 207).[8]

[7] When representatives of appellee Common Cause testified before Congress, they were not so cautious. See testimony of Fred Wertheimer, *Hearings Before the Subcommittee on Privileges and Elections of the Senate Committee on Rules and Administration on S. 23 et al.*, 93d Cong., 1st Sess. 269 (1973).

[8] Appellees would have this Court believe that our statement that "great deference to legislative decisions cannot be justified in the face of a plain conflict of interest," A. Br. 43, "defames the national legislature" (IA Br. 35). Under appellees' view, James Madison must be the greatest "defamer" of them all, for he wrote that "[n]o man is allowed to be a judge in his own cause because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time . . . . And what are the different classes of legislators but advocates and parties to the causes which they determine?" The Federalist, No. 10, Cooke ed. 1961, p. 59. Dean Pollak has wisely counseled that "[t]o insist 'that laws be equal in operation,' by uprooting those which are not, is a prudent exercise of

(continued)

What precisely they would have this Court do, however, is far from clear. They do not specifically ask for a holding that certain portions of the challenged legislation are not ripe for decision. If appellees were seriously advancing a ripeness argument, they would obviously have an obligation to identify to this Court with particularity what challenges to which statutory provisions were unripe; this they never do. Their lack of specificity indicates that their contentions are mere rhetorical flourishes, or perhaps an attempt to camouflage the weakness of their substantive arguments.

It may be that appellees are asking the Court to rule that Congress has some power, for instance, to limit political expenditures and contributions, but to refrain from ruling on the specific limits contained in the challenged statutes until some unspecified period of "experience" under them has been endured. If that is their suggestion, it verges on the irresponsible; they would be asking this Court to permit one or more Congresses and Presidents to be elected pursuant to what may later be determined to be an unconstitutional statute and regulatory system. Appellees elsewhere in their briefs express great concern for public confidence in the American government. (See, *e.g.*, IA Br. 64.) They nowhere mention the effects on public confidence of a perception that elections are being conducted under a scheme that protects incumbent officeholders from effective challenge by disaffected citizens, or of a discovery some years from now that our national legislature and Executive have been elected under unconstitutional laws which may well have affected the results.

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[8] (continued)
judicial power. It also seems prudent to take those prophylactic measures which will minimize legislative tendencies to enact laws of a different kind." Pollak, "Judicial Power and 'The Politics of the People,' " 72 Yale L.J. 87, 89 (1962).

The invitation to abstain from deciding the critical issues raised by this case is mischievous and indefensible. The Court of Appeals, quoting Mr. Justice Frankfurter in *United States* v. *United Auto Workers*, 352 U.S. 567, 570 (1957), described the issues presented here as "not less than basic to a democratic society" (op. at 1510). The federal appellees themselves have declared that "these appeals present substantial questions which warrant plenary consideration by this Court."[9] To avoid decision now would be to ensure that when the issues do come before this Court again — as they surely will — they will come in a piecemeal, erratic, and disorganized fashion. If even one person's candidacy is jeopardized by uncertainty over whether these statutes are constitutional, that is one person too many. Moreover, the future challenges will undoubtedly arise during the heat of an election campaign, with all the attendant pressures for a hurried decision before the impending election or convention. *Cf. Williams* v. *Rhodes*, 393 U.S. 23 (1968); *O'Brien* v. *Brown*, 409 U.S. 1 (1972); *ACLU* v. *Jennings*, 366 F. Supp. 1041 (D.D.C. 1973), *vacated as moot sub nom. Staats* v. *ACLU*, 43 U.S.L.W. 5043 (1975).

As this Court said in *Dombrowski* v. *Pfister*, 380 U.S. 479, 491 (1965), "[w]e believe that those affected by a statute are entitled to be free of the burdens of defending prosecutions, however expeditious, aimed at hammering out the structure of the statute piecemeal, with no likelihood of obviating similar uncertainty for others." More recently, this Court held that:

> "[w]here the inevitability of the operation of a statute against certain individuals is patent, it is

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[9] Memorandum for the Attorney General and the Federal Election Commission in Response to Jurisdictional Statements 1. The Attorney General has further stated that "[t]he United States recognizes that this case presents difficult questions close to the core of our system of government." (AG Br. I 1. See also *id.* at 93.)

> irrelevant to the existence of a justiciable controversy that there will be a time delay before the disputed provisions will come into effect . . . . 'One does not have to await the consummation of threatened injury to obtain preventive relief. If the injury is certainly impending that is enough.' " *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 143 (1974).

The instant case provides a far more immediate situation for judicial action than did the *Regional Rail Reorganization Act Cases*. The requirements of *United Public Workers* v. *Mitchell*, 330 U.S. 75 (1947), cited by intervening appellees, IA Br. 40-41, are also more than met here. The challenged statutes are now in operation.[10] These appellants and all other participants in the political process must today observe their strictures, and incur the chilling effects both of their prohibitions and their vagueness, at the risk of criminal prosecution. Pronouncements from the FEC now comprise almost an inch-thick sheaf of *Federal Register* pages. Copious evidence, cited throughout the briefs of all parties, indicates the profound impact the challenged legislation is already having on our national life. Every commentator on this legislation has spoken of the drastic effects it is having on the political process at this very moment.

Anything less than a complete decision of the merits of the present litigation would run the gravest risk that the American political system will be profoundly altered by legislation which eventually turns out to be unconstitutional. It has been suggested that it is too soon to

[10] *Amici* Scott and Kennedy's assertion that we challenge "every aspect" of the FECA and the FECA Amendments (SK Br. 1) is incorrect. As this brief and our main brief make clear, we refrain from challenging a number of provisions, including those which combat corruption without restraining speech, *e.g.*, 18 U.S.C. §§ 613, 614, 615, 617. See, *e.g.*, A. Br. 75-78.)

tell precisely how the challenged statutes will affect the political process. But, as the Attorney General cogently observes: "what must be decided now is whether, in light of the First Amendment, we can take the opportunity to find out" (AG Br. I 63). Appellees' mischievous abstention doctrine would, if accepted, present extraordinarily grave perils to the body politic of the republic.

II.

Appellees Have Failed To Demonstrate That Expenditures Or Contributions For Political Purposes Are Not Protected By The First Amendment.

Appellants argue that the contribution or expenditure of money for political purposes is protected by the First Amendment under such cases as *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964); *Mills* v. *Alabama*, 384 U.S. 214 (1966); *Miami Herald Publishing Co.* v. *Tornillo*, 418 U.S. 241 (1974), and the other cases cited at A. Br. 44-45. Appellees contend to the contrary that such contributions and expenditures are broadly regulable under such cases as *United States* v. *O.Brien*, 391 U.S. 367 (1968), and *Red Lion Broadcasting Co. v.* FCC, 395 U.S. 367 (1969) (IA Br. 74-78; AG Br. II 18, 52).

As the Attorney General has pointed out, cases like *Sullivan*, *Mills*, and *Miami Herald* form a body of case law "that shows political expression to be at the center of the unbridgeable freedom of speech, that protects paid-for political speech, that fears the deterrence caused by punishment after speech and abhors a restraint that prevents speech, and, finally, a case law that protects speech even when self-seeking and deceptive" (AG Br. I 14). These cases have been thought by all to state the general rule governing political debate.

It is clear from their arguments and the breadth of the FECA prohibitions that appellees would have this Court reject the rule of *Sullivan*, *Miami Herald*, and *Mills* in favor of *Red Lion* and *O'Brien*, cases that until now have been distinguished from the general rule because of the special circumstances they presented. Thus, intervening appellees candidly argue that they believe that political debate throughout the nation must be "structured" by law much as club regulations structure a college debate, with a panoply of rules about equal time, equal limits and the like (IA Br. 101). And the Scott-Kennedy brief argues that

Congress may regulate candidate expenditures by determining what level of expenditures affords candidates "an adequate opportunity to present [their views]" (SK Br. 68). It is clear from the face of these arguments that appellees would have this Court adopt the model of regulated speech represented by *Red Lion*, and reject the "uninhibited, robust, and wide-open" debate called for by *New York Times Co.* v. *Sullivan*, *supra*, 376 U.S. at 270. Even under *O'Brien*, however, the challenged statutes must fall, because no interest "unrelated to the suppression of free expression," 391 U.S. at 367, calls for such overbreadth (A. Br. 44-45).

Appellees seek to have it both ways. On the one hand, they and the supporting *amici* argue that candidates for federal office have an "almost drug-like dependence" on campaign funds (IA Br. 45). On the other hand, they also argue that "no firm relationship has been established between out-spending one's opponent and winning elections" (IA Br. 148). If, as is agreed by the parties and found by the District Court, Findings II, B 73, p. 207; App. II B 585, a firm relationship between spending and votes has not been established, the dependence of candidates upon campaign contributions can be explained in only one way: money is essential to political communication with voters.

Appellees cannot consistently claim that political candidates need to seek campaign money and at the same time argue that the FECA regulation of campaign contributions and expenditures can be distinguished from the regulation of political communication. To say "they merely limit the use of money in campaigns . . . .", IA Br. 91, is identical to saying "they merely limit political communication in campaigns." Campaign contributions and expenditures are the vocal cords of political communication. Without the former, the latter cannot exist.

Appellees note that in *Cox* v. *Lousiana*, 379 U.S. 559 (1965), a statute banning demonstrations in or near

courthouses was upheld, and they quote this Court (IA Br. 94) to the effect that:

> ". . . We are not concerned here with *such a pure form of expression as newspaper comment or a telegram by a citizen to a public official.*" *Id.* at 564 (emphasis added).

At last report, newspapers could not be published without cost, nor telegrams sent at no charge. Such "pure speech" obviously requires the expenditure of money or some other valuable resource. Prevent the expenditure of the money, and the speech is prevented as well. Here, a contribution of money to a political candidate, party or committee has exactly the same function as a telegram to a public official might have, or as the paid political advertisement held inviolable in *New York Times* v. *Sullivan, supra,* had. It registers support for one candidate, and opposition to his opponents.

Appellees' indifference to the impact of the FECA on political communication is starkly demonstrated by their position on the issue of "seed money" (IA Br. 120-29). Whether in beginning a campaign for a political issue or for a political movement, "up-front" money is needed to purchase those initial resources — offices, telephones, the items necessary for an initial mailing — to get the movement or candidacy off the ground (A. Br. 121-24, 129-38). The record fully demonstrates this proposition as to issues and candidates which seek change and which thus do not have the benefits of media attention or incumbency in political office. "Seed money" never guarantees that either the idea or the candidate will gain public acceptance. It merely permits the public to be exposed to new ideas and new candidates and to have an opportunity to evaluate their message.

Seed money is terribly difficult to raise through small contributions both because of the cost of mailings (agreed by the parties and found by the District Court to be 20 cents

per contact even before the impending postal rate increase) and because small contributions follow rather than precede public acceptance (A. Br. 136-38). Appellees would cheerfully sacrifice the presentation of new ideas and new candidates rather than permit money to be used to increase the alternative ideas and candidates exposed to the public.

"Merely" limiting the use of money for political purposes thus affects political communication as much as "merely" severing the vocal cords affects personal conversation. The assertion that the public is thus saved from candidates laden with improper obligations is clearly overdrawn; that the public will be "saved" from a robust and free debate is certain.

Indeed, appellees and supporting *amici* do not, in the last analysis, deny that the remedies they offer rely heavily on lessening the level of political communication. Thus, the Scott-Kennedy brief admits the "full awareness that the volume of political debate, the size of a candidate's audiences and the frequency with which they are reached may be substantially affected by the amounts of money that he is allowed to raise and spend for campaign purposes" (SK Br. 30).

Appellees also complain that the appellants unjustifiably discuss the merits of the FECA (IA Br. 39). In First Amendment cases, discussion of the congressional rationale is necessary since legislation trenching on political communication must be justified by compelling governmental interest. A foolish or frivolous statute, or a statute which in fact does not cure the evils it claims to remedy, or one which is only partially consistent with its rationale, cannot be based on a compelling governmental interest. *Erznoznik* v. *City of Jacksonville,* 43 U.S.L.W. 4809, 4810-13 (June 23, 1975); *Bigelow* v. *Virginia,* 43 U.S.L.W. 4734, 4739-40 (June 16, 1975); *Miami Herald Publishing Co.* v. *Tornillo, supra: United States* v. *Robel,* 389 U.S. 258 (1967). To some extent, therefore, both the rationale of the underlying

legislation and its actual impact on political communication must be examined, at the very least to determine whether the goal is compelling, the means chosen are reasonably related to that goal, and that subtle but highly discriminatory distinctions are not involved.

III.

Appellees Have Failed To Demonstrate That the Challenged Legislation Is a Remedy for the Specified Abuses or That Less Intrusive Means Are Not Available.

A. The Challenged Legislation Will Not Eliminate the Abuses to Which It Is Allegedly Directed.

Appellants have demonstrated not only that the challenged legislation is not responsive to a compelling governmental interest, but that it in fact aggravates rather than cures most of the ills alleged to be its rationale (A. Br. 55-78). Appellees have no answer for these arguments, preferring instead simply to provide a laundry list of instances of improper influence over official decisions sought or wielded by campaign contributors (IA Br. 44-65). In every case, with one exception, the challenged legislation does little or nothing to regulate the contributions involved to any significant degree. The one exception, the awarding of ambassadorships to large contributors, is clearly subject to the less intrusive means of the Senate's declining to consent to the nomination. (See A. Br. 76.) In every other case, the challenged legislation has little impact.[11]

Although there is now a ceiling on aggregate individual contributions, 18 U.S.C. § 608 (b) (3), the effect of this limit

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[11] Senator Pastore, Chairman of the Senate subcommittee that considered S. 372 and a Senate floor manager, has recently agreed that the impact of the legislation was not carefully considered. Senator Pastore stated that "[w]e have a law now that even the people who wrote it do not understand. I remember. I went to that conference and we were there for days and days and days and nobody understood what was in that bill . . . . We were running like scared rats. We thought the stronger we make it, the tougher we make it, the more people would believe us. I do not think they believe us any more today than they did before we passed the law." 121 Cong. Rec. S 17887 (daily ed. Oct. 8, 1975).

will be dissipated by the numerous other statutory provisions that allow organized economic interests to continue to contribute in very large amounts. Under 18 U.S.C. § 608 (b) (2), certain kinds of political committees are permitted to make substantially larger contributions than either individuals or other committees. The statute requires that such committees be registered for more than six months, receive contributions from 50 or more persons and give to five or more candidates. There are no limits on how many such committees may represent particular interests.

This provision thus permits organized economic interests such as the dairy industry or the AMA, see IA Br. 47-50, to give more money to candidates than other groups, since the six-month requirement is tailored to groups which are already well organized and have the finances to remain in continuous operation and contact. Whereas a six-month requirement will hamper philosophically motivated groups with widely dispersed members who want to respond to an issue as it arises, or who coalesce only near election time, organized interest groups can easily adjust to it.

Organized interest groups will also be better able to "proliferate" committees and thus expand their permissible giving to candidates more than will "issue" groups. Thus, medical associations and dairy interests can organize their political committees at the county level, each county organization being able to give $5,000. Civil-rights groups, anti-busing groups, groups seeking to expand the welfare state or groups promoting gun control will also have "six month" committees, but rarely will they be represented by more than one at any particular time. Because their adherents are dispersed and are not in continuous professional contact, only one or two such committees will have sufficient name recognition to attract contributions. The six-month requirement thus deters proliferation only among those less well-organized philosophical groups and not among organized economic interests. The examples in

appellees' brief of "special interest" contributions are actually examples of activities left untouched by the challenged legislation.

Appellees make virtually no attempt to answer this point other than to quote a wholly inapposite passage from the legislative history of the Act (IA Br. 131). The portion of the Conference Report quoted therein was obviously directed to organizations with a hierarchical structure and intended to limit the activity of political committees formed vertically therein. In the case of both the dairy interest and AMA, however, horizontal committees representing geographical areas within the states are involved and are simply unaffected by either the provisions of the statute or its legislative history. To be sure, the present organization consisting of a few large committees will have to be changed to increase the number of potential $5,000 donors, but the FECA does not restrict that. The need to avoid the status of "affiliated committees" (which are to be treated as one committee subject to a $5,000 contribution limit) is at most a marginal impediment to knowledgeable "special interests."

In the case of unions and corporations the challenged legislation very specifically fosters their financial participation in campaigns. They are also free to proliferate political committees, *e.g.*, every local union might have one committee while each corporation might have a stockholder committee and an employee committee. The challenged legislation, moreover, for the first time permits corporations which are government contractors — the largest corporations — to take advantage of the so called "segregated fund" provisions previously available only to unions and corporations without government contracts. 18 U.S.C. § 611. These funds can be administered by union or corporate money, subject to no statutory limits whatsoever, and the amounts raised can be directed to candidates through "six-month" political committees. Such funds are not required to let their contributors have any say about the

candidates to whom the committees contribute. It is thus possible for a union or corporation to raise $100,000 by spending $100,000 from its treasury. As a result, the temptation to make illegal corporate contributions — which appellees emphasize so heavily — is relieved, since corporate money can now be used to raise money for contributions. The illegal conduct relied on to justify the FECA is thus "reformed" by providing a functionally identical but lawful alternative. Thus, although individuals such as H. Ross Perot may not now directly make contributions in excess of $25,000, see IA Br. 55-56, they need not use personal funds for contributing but can have their companies raise and administer "segregated funds" and, through them make unlimited expenditures from the corporate treasury to raise funds for candidates. *The challenged legislation thus facilitates rather than limits the use of campaign money by organized economic interests.*

The chairperson of the Republican National Committee recently exhorted the National Association of Manufacturers to take advantage of the provision of the law permitting corporations to communicate with their stockholders and their families. She declared:

> " . . . under the new law corporations can, for the first time, set aside separate, segregated funds to establish and administer political action committees. While corporate money still can not be put into the committee fund, corporate money may be spent to administer the fund. So far, through the end of September 99 corporations have registered political action committees — there should be 999, or 9,999 — and still it would be only a beginning." Speech of Mary Louise Smith to National Association of Manufacturers Public Affairs Conference, Oct. 23, 1975.

While the challenged legislation carefully protects and fosters campaign spending by economic interest groups, it does nothing to end such abuses as giving to opposing candidates or making large late contributions which avoid effective disclosure. What the challenged legislation does regulate, and with a vengeance, are truly ideological contributions — those very contributions which fall most clearly within the term "pure speech."

B. Other Remedies Are More Effective and Less Intrusive.

We have previously enumerated a number of less intrusive and more efficient remedies for the specified abuses (A. Br. 75-78). Appellees, preferring the condemnation of corruption in the abstract to the rigorous examination of the FECA, have not responded to these suggestions or shown why these will not effectively remedy the problems.

Nor have they convincingly responded to appellants' suggestion that, apart from carefully drafted remedies responding precisely to a demonstrated abuse, disclosure to the voter is not only an adequate remedy but the one most consistent with democratic values. In their brief, for example, they emphasize that $20,000,000 was received by President Nixon in 1972 in large contributions from 153 people (IA Br. 65-66). It is also true, however, that $16,000,000 was raised by the Nixon campaign from large contributors before April 7, 1972 — obviously, given the unusually early date, in the belief that the contributions would not be disclosed. That strongly suggests that disclosure to the voter is the best deterrent to improper conduct or "excessive" reliance on large gifts.

C. Appellees Have Not Show Any Undue Increase in the Cost of Campaigning.

Appellees again rely entirely upon a comparison with the cost-of-living index to demonstrate an "arms race" in campaign costs. As we demonstrated earlier, the increases in campaign costs are readily explainable on grounds not suggesting any crisis or illness in the body politic (A. Br. 57-61). Merely as one example, advertising expenditures have increased at a rate greater than that of campaign expenditures (A. Br. 57). To the extent that candidates for office must compete with commercial and other advertisers for the resources employed in advertising, they necessarily have to pay more. That demonstrates only that a limit on campaign expenditures will necessarily limit speech.

Moreover, if the "sky-rocketing" increase in the cost of campaigning continues to be relied upon by appellees, surely they are under some obligation to explain why the cost of the frank has risen at twice the rate of the cost of campaigns generally (A. Br. 57-58) and yet is not limited by the challenged legislation.

IV.

Appellees Have Failed To Demonstrate That the Limitations on Candidate Expenditures Are Constitutional.

A. Appellees Have Demonstrated No Compelling Need Justifying Limitations on Candidate Expenditures.

Appellants have shown that expenditure limits are unconstitutional *per se* and serve no compelling state interests (A. Br. 79-87). Indeed, expenditure limits effectively reduce competition for federal elective office and are contrary to the pervasive national interest in full and robust political debate.[12]

Appellees' response is confused at best. They argue first that limitations on expenditures will aid the enforcement of limitations on contributions by reducing the temptation to raise large contributions (IA Br. 79-80). Even if that were true, a marginal increase in enforcement efficiency cannot justify such drastic limitations on political speech. See, *e.g.*, *United States* v. *Robel*, 389 U.S. 258, 262-67 (1967).

Appellees next argue that "equalizing" expenditures will equalize political opportunity (IA Br. 81-86, AG Br. II 23-27). As we demonstrate in our main brief, 94-107, and in

[12] Senator Muskie, a strong proponent of the FECA Amendments, has recently voiced his support for our position: " . . . since passage of the act last year, I have had increasing doubts about the constitutionality and wisdom of [expenditure limits] . . . . The right to communicate one's views to the voters, and the right of voters to make a choice among candidates based upon informed judgment of what a candidate stands for, is basic to our democratic process. . . . Spending limits which restrict that access may, in my opinion, be inconsistent with the First Amendment freedoms embodied in the Constitution" 121 Cong. Rec. S 17888 (daily ed. Oct. 8, 1975).

the next subsection, the particular limits on expenditures are by no means equal in view of their exclusion of the many financial and other factors favoring incumbents. In any event, *New York Times Co.* v. *Sullivan*, *Mills* v. *Alabama*, and *Miami Herald Publishing Co.* v. *Tornillo*, *supra*, stand four-square in the path of any attempt to apply *Red Lion*, *supra*, to the entire political process, for "equalizing" speech does not reflect a legitimate "non-speech" interest of the government.

Appellees claim that "reducing 'noisy' or 'excessive' communication is not a goal of these limits" (IA Br. 91 n. 104). That is flatly inconsistent with one of their principal justifications for the Act, just discussed: that it will "equalize" opportunities for political success. That means, if it means anything, that the political speech of some is "excessive" and must be curtailed in the interest of equality. It is understandable that appellees are uneasy with their own argument, since such a legislative purpose is plainly not "unrelated to the suppression of free expression." *United States* v. *O'Brien*, 391 U.S. 367, 377 (1968), and thus constitutionally is wholly illegitimate.

Appellees strenuously argue that the FECA limits do not regulate the content of speech. (See, *e.g.*, IA Br. 91.) That contention is plainly wrong, since the statute on its face applies only to expenditures for speech which advocates the election or defeat of a candidate. See *Gore Newspapers Co.* v. *Shevin*, 397 F. Supp. 1253, 1256-57 (1975). The statute thus depends upon a distinction between speaking for or against candidates and speaking on issues or non-political subjects — a distinction based squarely on content. *Cf. Thomas* v. *Collins*, 323 U.S. 516 (1945).

The common thread running throughout appellees' contentions is their expansive view of congressional power over political communication. They and the supporting *amici* argue that Congress may regulate expenditures without

limit so long as it leaves candidates for federal office "an adequate opportunity to present themselves to the public" (SK Br. 68). What opportunity is "adequate" is to be decided by Congress, and its judgment is to be shown deference by this Court.[13]

Central to appellees' argument is their attempt to misstate our position. We carefully defined the circumstances in which the First Amendment bars the regulation of campaign expenditures (A. Br. 45-48), and we also defined the narrow permissible zone of regulation (*id.* 51-54). Appellees blur this distinction by asserting that we deny any congressional power to regulate the expenditure of campaign funds (IA Br. 74). To the contrary, we explicitly argued that Congress can enact laws limiting the expenditure of campaign funds for non-political, *i.e.* non-speech, purposes (A. Br. 77). The FECA cuts sharply in the opposite direction: while limiting expenditures for speech

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[13] The Scott-Kennedy brief contends, citing Communist Party v. Subversive Activities Control Board, 367 U.S. 1, 94-95, 169-70 (1961) and United States v. Robel, 389 U.S. 258, 271, 285 (1967), that this Court "will not review congressional findings of fact even in cases under the First Amendment" (SK Br. 49). Both of those cases involved the Communist Party and the security of this country. Even so, in *Robel*, the statute was invalidated, and the majority opinion stated that "the concept of national defense cannot be deemed an end in itself justifying any exercise of legislative power designed to promote such a goal." 389 U.S. at 264. See also New York Times Co. v. United States, 403 U.S. 713, 719 (1971) (Black, J., concurring); 729-30 (Stewart, J., concurring).

In United States v. United States District Court, 407 U.S. 297, 320 (1972), this Court stated with regard to the facts at issue there: "[w]e cannot accept the Government's argument that internal security matters are too subtle and complex for judicial evaluation. Courts regularly deal with the most difficult issues of our society." In truth, therefore, this Court does examine facts, particularly in First Amendment cases, where necessary to safeguard fundamental liberties. To do otherwise would simply result in abdication of the judiciary's responsibility to protect the Constitution.

purposes in campaigns, it legitimizes (and places no limits on) the use of campaign funds for non-speech purposes. 2 U.S.C. § 439a.

Since voter persuasion is at the heart of freedom of expression, and expenditures are essential for political communication, Congress may not limit such speech in the absence of a compelling need, and in no event unless "the governmental interest is unrelated to the suppression of free expression," *United States* v. *O'Brien, supra,* 391 U.S. at 377, which is not the case here.[14] We urge this Court to reject appellees' extreme view of a virtually unlimited congressional regulatory power over political campaigns.

B. *The Particular Limitations on Candidate Expenditures Are Discriminatory and Unconstitutional.*

Appellants have demonstrated that the FECA on its face systematically discriminates against challengers to incumbent officeholders (A. Br. 94-104). As we showed in our main brief, incumbents have enormous financial resources in the form of the frank, office, staff, etc., available to them in sums which exceed by far the amounts spent by challengers on all campaign expenses (A. Br. 99-103). Even when scrupulously employed, these perquisities

[14] Appellees' attempts to distinguish Deras v. Myers, 535 P.2d 541 (Ore. 1975) and Bare v. Gorton, 526 P.2d 379 (Wash. 1974) from the present case are futile, as even a casual reading of those cases will show. See Note, State Campaign Spending Restriction Violates the First Amendment, 49 Tulane L. Rev. 1146 (1975). Certainly there were provisions in those statutes not involved here, but the courts did directly and specifically address the question of limits on campaign expenditures. They held such limits unconstitutional.

give congressional incumbents immense financial advantages over challengers.[15]

Appellants have, moreover, shown that the use of these perquisites often performs campaign functions. It is well known, for example, that staff members frequently perform essentially political tasks, *cf.* Findings I, 28, p. 19, App. II A 21, and it is agreed by the parties and found by the District Court that peak periods of use of the frank are just before elections, *id.*, 34, p. 21, App. IIA 23. In the first two weeks of October, 1974, for example, 21.8 million pieces of congressionally franked mail were sent out. Wall Street Journal, June 2, 1975, at 5, col. 1. None of this is a campaign expenditure under the FECA, while every piece of mail sent by a challenger comes within the expenditure limits. It cannot be seriously contended that these 21.8 million pieces of franked mail do not involve, in amici's phrase, an "opportunity to present themselves [incumbents] to the public" (SK Br. 68).

Although appellees make much of their fear of the corruption inherent in private financing, they are virtually silent on this flagrant violation of principles of elemental fairness. Indeed, only two wholly transparent arguments are made to support the gross unfairness of the FECA limits on candidate expenditures. First, appellees ask this Court to ignore the vast perquisites of congressional office since they are not part of the FECA itself (IA Br. 112-13). They thus view the limitations on expenditures in isolation from all other laws or appropriations passed by Con-

[15] Astonishingly, the Scott-Kennedy brief suggests that appellants are not the victims of such discrimination because "none is a challenger to an incumbent or alleges that he wishes to challenge an incumbent" (SK Br. 66). Appellant McCarthy is running for President. Candidates of the Conservative Party of New York, the Mississippi Republican Party and the Libertarian Party are running for federal office as challengers at every level.

gress, no matter how functionally similar and no matter what discriminations are thus created.[16] This ostrich-like approach is hardly consistent with the Constitution.

Second, appellees suggest there are other remedies for the gross imbalance in campaign resources dictated by the FECA, *id.* These remedies remain unspecified, apart from the suggestion that a lawsuit might be brought by a candidate challenging his incumbent opponent's use of the frank (IA Br. 113). This is a totally inadequate response. Appellants' contention is not that incumbent perquisites are "abused" but that the FECA itself, by subjecting *every* expenditure by challengers to the limits, affirmatively discriminates, since only *some* expenditures by incumbents are covered. Incumbent perquisites perform, quite inescapably, a dual function: they are perfectly legitimate necessities in helping Congressmen do their jobs properly; but they *also* have inevitable political effects and in that sense are functionally interchangeable with expenses challengers must make from contributions they can raise

[16] Even beyond the frank, congressional staff and other incumbent benefits expressly excluded from the expenditure limits (see, *e.g.*, 39 U.S.C. § 3210(f)), the FECA does not on its face regulate what are euphemistically called congressional "office accounts." These accounts finance many of the activities by which incumbent office holders maintain contact with their constituents. Private individuals and interest groups are currently free to give unlimited and undisclosed amounts to congressional incumbents for these "accounts." There can be little doubt that such accounts have a political impact, for the Senate, in rejecting FEC regulations which would have treated them as campaign funds, clearly indicated that they were of value in campaigns, 121 Cong. Rec. 17676 (Senator Bell); 17880 (Senators Hatfield and Stevens); (Senators Pell and Ford) (daily ed. Oct. 8, 1975). The extent to which FECA will be construed to regulate "office accounts" is thus solely in the hands of the FEC and incumbent Members of Congress. Because all contributions to a non-officeholding challenger are treated as campaign contributions, the challenged legislation is unconstitutionally discriminatory on its face.

and must charge against their "equal" expenditure limits. Victims of discriminatory legislation trenching on First Amendment freedoms should not be required to institute actions of doubtful, if not frivolous, merit against other statutes in the hope that the discrimination will be lessened.[17] Nor, of course, do we argue that "the Constitution requires the government to provide challengers with some offsetting method of attracting ballots" (SK Br. 65); we do argue that the Constitution forbids government to prevent challengers from using self-help in employing offsetting methods — *i.e.*, expenditures equalling or exceeding, or at least coming closer than the limits permit to, the incumbent's real expenditures — if they can.

Appellees and supporting *amici* ask this Court to reject our claim of discrimination against challengers on the grounds that it is "speculation" requiring "elaborate factual inquiries" for which the Court is unsuited (SK Br. 47). We argue that when, for example, there is a disparity between candidates in name recognition, the candidate without high name recognition must be able to spend at a high level if that candidate is to have a viable chance of victory, regardless of what his opponent spends. The name recognition of challengers is typically lower than that of incumbents, and for that reason — and because of the financial perquisites available to incumbents which surely increase name recognition — limitations on spending will generally hurt challengers. It can hardly be denied, for example, that challengers seeking to defeat men with the high name recognition of *amici* Senators Scott and Ken-

[17] A candidate seeking to enjoin an opponent from using the frank would in all likelihood have to treat his litigation expenses as campaign expenses under the expenditure limits, see FEC Advisory Opinion 1975-27 (Oct. 22, 1975), since they are in the plainest way designed to influence the election. Any other ruling would encourage lawsuits by candidates to obtain publicity or to charge their opponents with misconduct.

nedy would have to spend at a high level merely to gain the name recognition essential to a viable — let alone successful — campaign.[18]

That is an *a priori*, common-sense proposition. It is no more "speculation" than the proposition that an "equal space" requirement will deter the printing of controversial material. See *Miami Herald Publishing Co.* v. *Tornillo, supra;* see also *Mills* v. *Alabama, supra.* Indeed, those very cases were decided on the basis of generalized "factual" propositions unsupported by record evidence. That a supporting record exists in this case merely adds to the force of appellants' claims.

Appellees further argue that deference should be shown to Congress' judgment about whether a particular limit is discriminatory against challengers. That, of course, asks Congress to be accepted as the "judge in . . . [its] own cause," *The Federalist*, No. 10, Cooke ed. 1961, p. 59, and imperils the First Amendment by permitting government to regulate speech on the basis of dubious findings of "fact."

[18] Appellees assert that Dr. Roland Cole agreed that "where incumbents exceeded both the ceilings and their challengers' spending, the ceilings would have benefitted the challengers" (IA Br. 146 n. 162). This is a complete misrepresentation of what Dr. Cole said. He agreed only to the obvious arithmetical fact that in the situation just described, if both challenger and incumbent were limited to and spent the same amount of money, then the difference in the amount of expenditures between the two candidates would have been narrowed. Cole dep. tr. 304-05.

This miscitation is typical of appellees' continued unwillingness to understand marginal-utility analysis. The fact that two candidates spend the same amounts where in other circumstances they would have spent different amounts quite obviously tells us nothing about the marginal value of each additional dollar of expenditures to those two candidates. As we have stressed, the marginal value of extra spending to less-well-known challengers is plainly greater than the marginal value of the same amount spent by well-known incumbents. See A. Br. 97.

Any case arising under the First Amendment can be made a "fact" case. Thus, the judgment as to whether requiring newspapers to give equal space to those they editorially criticize outweighs the deterrent effect on the printing of controversial matter would be, under appellees' position, a "factual" judgment to be made by the legislature. But see *Miami Herald Publishing Co.* v. *Tornillo, supra.*

In any event, Congress' actual judgment as to the political impact of the use of their perquisites not regulated by the FECA is abundantly demonstrated by the debate over "office accounts," a debate which demonstrated the firm conviction of the Senate that such accounts affect the results of elections. See p. 32 n. 16, *supra.*

The evidence fully and amply establishes the proposition that expenditure limits discriminate against challengers. Neither appellees nor supporting *amici* rely on any statistics other than the so-called "overall combined limitation," which has no relevance to the actual impact of the statute.[19] All parties agree that the FECA does not permit candidates to aggregate primary and general-election spending, and to use the overall limit as a measure of

[19] Appellees criticize Cole, Campaign Spending in Senate Elections (1975). (See IA Br. 1a-8a.) The criticism this dissertation received at the Kennedy School was no more than is typically directed at any such scholarly effort as part of the academic exercise. The criticism did not, moreover, in any way relate to the materials utilized by appellants.

The vociferous objection voiced by appellees to Cole's inclusion of repaid loans in expenditures (IA Br. Appendix A, 2a) has already been addressed by the FEC. The Cole method was upheld, and the Common Cause method rejected. See FEC Notice 1975-51, 40 Fed. Reg. 44698, 44699, § 100.7(a)(1)(i)(A)(1) (September 29, 1975). The Common Cause figures thus understate expenditures. Appellees' denunciation as "surely impossible" (IA Br., Appendix A, 2a) of a classification which the Commission has found required by the statute suggests also that the statute is not without serious problems of vagueness. (See A. Br. 211-20.)

comparision with spending in prior elections is thus utterly misleading. The Act clearly and unequivocally distinguishes between primary spending and general-election spending and does not permit candidates to spend up to the "overall limit" in the crucial time just before a general or primary election. 18 U.S.C. § 608(c). Congress has mandated the primary-general election distinction; and candidates subject to its terms must be concerned, not with the overall combined limit, but with what they can spend in the particular election they face.[20]

Even using the overall combined limitation as a guide, however, it is apparent that successful challengers do spend at a high level. Once any attempt is made by any method to segregate primary and general-election spending, the fact that successful challengers are "high" spenders (relative to the limits) becomes clear beyond peradventure. (See A. Br. 94-99.)

Indeed, it is hard to understand how the proposition that low limits will discriminate against challengers can be disputed. The proposition was widely accepted in the Congress and embraced by such enthusiastic supporters of the legislation as John Gardner and Fred Wertheimer of Common Cause and Senators Clark, Biden, and Cannon. (See A. Br. 98.) Only now, in the context of this litigation, is the proposition disputed.

A less frivolous argument is that, even if spending is of marginally greater value to challengers than to incumbents, the balance of advantage in a system of unlimited expenditures may still lie with incumbents if they are able to

[20] Appellees baldly state that it is not possible to segregate primary from general-election expenditures in past elections "with reasonable accuracy" (SK Br. 32 n. 11; IA Br. 136 n. 152). They simply ignore the agreed finding that it *is* possible to do precisely that — "with reasonable accuracy." Findings II. B2(c), p. 187; App. II B 569; see A. Br., Appendix A, A-2.

raise amounts which substantially exceed that raised by challengers (*e.g.*, AG Br. II 72). Actual experience, however, shows that the relatively great advantage incumbents have in fundraising is in those races which are never close. In 1974, challengers in 69 House races were able to spend more than the FECA's $70,000 limit. The average spending in those races by challengers was $113,094 while the average spending by incumbents was $106,230. Findings II, A-5, pp. 32-58; App. II A 327-86. The impact of the FECA ceiling on expenditures will be in those very races in which fund-raising capacity is already about equal or actually favors challengers.[21]

The low limits have been made even more onerous by the FEC's recent surprising decision that the large lawyers' and accountants' fees necessary to ascertain the meaning of the Act and to attempt to comply with it must be counted against the expenditure limits. FEC Advisory Opinion 1975-27 (Oct. 22, 1975). The bizarre result is that the harder a candidate tries to comply with the manifold com-

[21] The Scott-Kennedy brief suggests that the limits imposed by the FECA permit a candidate "an adequate opportunity to present himself to the public" (SK Br. 68). It devotes precious little discussion, however, to the FECA's impact as demonstrated in the record. *Before* the postal-rate increase, for example, one mail or phone contact with a voter, as agreed by the parties and found by the District Court, cost 20 cents, as against a 12-cents-per-person general-election limit in Senate races. Finding II, B-40, p. 200; App. IIB 580. The cost of raising small contributions by direct mail, as necessitated by the Act, runs at least 40 percent of the return. Findings II, B-50, p. 203; App. II B 582. (The FECA fund-raising allowance is 20 percent, 18 U.S.C. § 591(f)(4)(H).) Volunteers have to be supervised by a paid staff and the disclosure provisions of the FECA also impose substantial costs to be counted as campaign expenditures. Yet these are only the most basic organizational costs for challengers.

Intervening appellees chide us for not giving 1972 spending-per-eligible-voter figures for appellant McCarthy's New Hampshire campaign and President Nixon's general-election campaign. The figures in question are $1 and 36.9¢ respectively — both far in excess of the limits.

plexities of the statute, the more he is penalized and his less conscientious opponent is advantaged. Commissioners Aikens and Tiernan dissented from the opinion for illuminating reasons:

> "The Chairmen of the Republican Senatorial and Democratic Senatorial Campaign Committees in their comments regarding this Request stated,
>
> 'The burdens of complying with the Federal campaign laws and Commission regulations are far in excess of that anticipated by Congress when the 1974 Amendments were passed. Because of the complexity of the new law, nearly every Federal candidate will need an accountant and an attorney to strictly comply with its numerous requirements.'
>
> "They went on to note, 'The difficulties of compliance are particularly acute for non-incumbent challengers . . .'
>
> "The newcomer to politics, the volunteer campaign official, and the modestly funded candidate should not be dissuaded from entering the electoral arena because of difficulties in interpeting the Act; once involved in a political campaign, they should not be restrained in their actions or expressions because of uncertainty about the consequences of every deed." *Id.*

The limits are both stringent and heavily discriminatory against the unknown newcomer. They are in effect a regulation of the content of speech which will inevitably silence the challenger with low name recognition and limited access to the media. See *Police Dep't of Chicago* v. *Mosley, supra.* To say they are "neutral" or "evenhanded" is to exalt ~~form~~ over substance.

form

Appellees claim that the recent New Hampshire Senate election proves that the expenditure limits are not too low because the voter turnout was greater than in 1974 (IA Br. 138). Obviously special factors such as the great publicity, the closeness of the prior vote and presidential campaigning were not unrelated to the voter turnout. The real significance of the special election lies elsewhere:

> "John A. Durkin, the Democratic victor and new Senator, spent less of the overall $220,000 campaign ceiling than did Louis C. Wyman, the Republican loser, but Mr. Durkin was able to target his spending more effectively because thousands of dollars worth of his labor support fell outside the ceiling.
>
> * * *
>
> "There are over 45,000 union households in New Hampshire, and labor agents working for Mr. Durkin telephoned each one several times, mailed literature, distributed absentee ballots and even worked house-to-house in some working class districts on the day of the election.
>
> "Mr. Wyman had the benefit of volunteers who did many of the same things, but the expense of maintaining telephone banks and of printing and mailing literature was charged against his campaign spending ceiling, reducing the amount he could devote to other activities.
>
> "As a result, although Mr. Durkin spent about $25,000 less than his Republican opponent, he could afford $20,000 worth of television spots and $35,000 in radio advertising while Mr. Wyman spent $22,000 on radio and nothing on television at all." New York Times, September 22, 1975, at 12, col. 2.

If this were not devastating enough to appellees' position, one of Mr. Durkin's fund-raisers recognized that the spending limit would have benefited the incumbent had it not been for the unique circumstances:

> "'Because this was a rerun of last November's tie election,' Mr. Hemenway said, 'both candidates had very high public recognition. If we had been starting from scratch trying to establish our candidate with a $180,000 ceiling, Wyman would have beaten Durkin'." *Id.*

The New Hampshire election, so far from supporting appellees' position, provides an ominous foretaste of the vicious discrimination which the expenditure limits, if sustained, will spread throughout our political system next November.

C. Appellees Have Failed To Demonstrate That Other Discriminatory Distinctions Are Constitutionally Justified.

Appellees do little by way of explaining, much less justifying, other patently discriminatory provisions relating to expenditures. (See A. Br. 104-06.)

For example, although the role of political parties calls for permitting them to make expenditures on behalf of candidates, it hardly follows that the total expenditures permitted to independent candidates should not equal those of party-supported candidates. Yet the FECA enacts just such a disparity, 18 U.S.C. § 608(f). It is surely no answer to argue, as appellees do, that former Senator McCarthy can avoid such discriminations by running as a party candidate (IA Br. 153); the right to speak may not be so conditioned. Nor, obviously, would political parties be "outlaw[ed]" (*id.*) if independent candidates were allowed increased limits to equal what party-supported opponents can spend.

V.

Appellees Have Presented No Constitutional Justification for Limitations on Independent Expenditures.

Appellants have explained why the FECA's limit on independent expenditures, 18 U.S.C. § 608(e), is unconstitutional, and why the "loophole-closing" rationale of the court below is incorrect (A. Br. 107-16). Appellees seek to justify Section 608(e) by narrowing the meaning of freedom of the press.

A critical function performed by the press is the printing of paid advertising on public affairs, including advertisements advocating the election or defeat of candidates for federal office. That the press cannot be compelled to accept such advertising, see, *e.g.*, *Miami Herald Publishing Co.* v. *Tornillo*, *supra*, 418 U.S. at 254-56, in no way detracts from the proposition that paid political advertising is essential to a system in which a multitude of tongues are heard. Both the right to reject advertising and the right to purchase it reflect a policy of non-interference by the government. Indeed, the word "press" can in no sense be limited to the institutional press but must be taken to refer generally to all kinds of publishing, including the purchasing of political advertisements. *Lovell* v. *Griffin*, 303 U.S. 444, 452 (1938); *New York Times Co.* v. *Sullivan*, *supra*; *Bigelow* v. *Virginia*, *supra*. First Amendment rights would otherwise turn on an irrational distinction between buying a printing press and hiring someone who owns one. Section 608(e) is thus a direct restraint on publishing as well as on speech.[22]

[22] In any event, Section 608(e) does regulate the institutional press both through potential criminal liability and through surveillance (A. (continued)

The Scott-Kennedy brief seeks to distinguish between "personal activity" and other kinds of political activity in support of candidacies (SK Br. 59-60). This is not a distinction which has ever commanded consideration, much less acceptance, by this Court. Individuals concerned with public issues commonly sign advertisements drafted by others which support candidates. No one had ever thought to suggest that the author was entitled to greater protection than those who joined in the advertisement. The entire argument of *amici*, however, rests on the validity of such a distinction and the necessity to eliminate some "personal" activity in order to regulate the "non-personal," even though admittedly that "proximately affect[s] . . . [an individual's] personal enjoyment of opportunities to publish

[22] (continued)
Br. 115). Moreover, while appellees repeatedly misstate the statute as exempting from the limits all news stories, editorials, etc. (*e.g.*, IA Br. 161 n.181), in fact such press expression *is* subjected to the expenditure and independent-expenditure limits when the source is "owned or controlled by any political party, political committee or candidate," 18 U.S.C. § 591(f)(4)(A); see A. Br. 110 n.4. Thus, for example, if a candidate who owns a newspaper had reached his expenditure limit, his newspaper would be thereafter barred from editorially endorsing his candidacy, and presumably from printing any coverage which might be considered favorable thereto; it would also be barred from endorsing or favoring other candidates if the expenditure in question exceeded $1,000.

Ownership or control of news media by political parties is far from unusual in American history, dating back to the beginning of the nation when the First Amendment was framed, Mott, American Journalism 124 (1950). Horace Greeley, Democratic presidential candidate in 1872, owned and published the New York Herald-Tribune. James M. Cox, Democratic presidential candidate in 1920, also owned newspapers, as did Senator William Knowland and Representative Willian Randolph Hearst. Does Senator Buckley "control" his brother's National Review? The Republican Party certainly controls its publication First Monday. Thus substantial segments of the press are made directly subject to the expenditure and independent-expenditure limits and to the prior restraints which they impose.

his own thoughts" (SK Br. 56). Since both types of activity fall within the protection of the First Amendment, no such effect can be justified. *Amici's* argument is no more persuasive than a claim that a campaign oration is bereft of First Amendment protection if it is ghost written.[23]

Amici also argue that the invasion of this "personal liberty" is less than appears because only a small fraction of the population can afford to exercise it (*id.* 61). This also cuts a wide swath through what have long been considered protected activities. People frequently sign advertisements which advocate candidacies but which are not purchased on a *pro rata* basis. Until now, the "free riders" were thought to be engaging in protected political activity. *Amici's* extreme position should be rejected out of hand.

But there are more fundamental objections to the appellees' and *amici's* position. The very instinct of the First Amendment rejects the concept that otherwise perfectly lawful, peaceful — indeed, vital — speech may be cut off in the service of governmental purposes, particularly where those purposes are themselves constitutionally suspect. To be sure, it is possible that some wealthy contributors, prohibited from making direct contributions to the candidates of their choice, may instead spend money to com-

[23] Intervening appellees suggest that we argue "that the most difficult constitutional questions would arise if the section were applied to advertisements containing the purchaser's own speech" (IA Br. 161). We make no such argument; we think the distinction both illusory and irrelevant. It was intervening appellees themselves who made this argument in the Court of Appeals, urging the court "to construe the words of Section 608 to exclude individual expenditures to publicize the spender's own speech, should that be necessary" (Brief of Intervening Defendants in the Court of Appeals, p. 123). "We admit . . . that there is a bigger question when we are talking about speech of the contributor himself . . . . We think that presents a problem" (Court of Appeals, tr. of oral arg., June 13, 1975, p. 63 (Mr. Cutler)). These views have not thus far appeared in intervening appellees' presentation to this Court.

municate their political choices directly to the public in the form of paid advertisements or other partisan communications. Of course, there is no indication in the record or elsewhere how likely this is to occur, given the fact that it is far more cumbersome than simply making a contribution. But even assuming such activity may occur with some regularity, can the mere possibility of that "loophole" — before there has been any development of a problem — justify a flat restriction on speech?

We submit the Court's cases say that it cannot. Only last term this Court again stressed that the genius of the First Amendment and its ban against prior restraints is the notion that speech cannot generally be supressed in advance, and may only be subject to sanction, if ever, after its harmful effects, if any, can be assessed:

> "The presumption against prior restraints is heavier — and the degree of protection broader — than that against limits on expression imposed by criminal penalties. Behind the distinction is a theory deeply etched in our law: a free society prefers to punish the few who abuse rights of speech *after* they break the law than to throttle them and all others beforehand. It is always difficult to know in advance what an individual will say, and the line between legitimate and illegitimate speech is often so finely drawn that the risks of free wheeling censorship are formidable." *Southeastern Promotions, Ltd.*, v. *Conrad*, 43 L. Ed. 2d 448, 459 (1975).

In a very real sense, Section 608(e) is premised on the same impermissible basis. Because of a fear that some individuals might use their independent expenditures as a loophole, the law chooses "to throttle them and all others beforehand."

Appellees suggest that the Court should refrain from invalidating the law until it can be seen how it functions (IA Br. 37-42). Surely, in the case of independent expenditures, Congress should have taken the risk and waited to see whether indeed there would be such a loophole before enacting this unprecedented limit on free political communication. The First Amendment demands no less:

> "Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. . . . If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence." *Whitney* v. *California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring).

No legitimate justification has been offered for the "enforced silence" of Section 608(e). It should be declared flatly unconstitutional.

VI.

Appellees Have Not Demonstrated That the FECA Limitations on Campaign Contributions Are Constitutional.

A. *Wholesale Limitation on Contributions Violate the Constitution.*

We argued in our main brief that wholesale limits on contributions to political candidates, parties, and committees could not be constitutionally justified (A. Br. 116-27). As with expenditure limits, appellees misstate our argument. We do not contend that Congress is without power to impose any limitations on contributions. To the contrary, our main brief listed a number of regulable instances — *e.g.*, contributions made too late to be fully disclosed to the voter — of contributions carrying a high danger of improper purpose (A. Br. 75-78). Indeed, we were at pains to show that less intrusive regulations of contributions are available and in fact would be more effective remedies for the abuses specified. Thus we argued that *United States* v. *O'Brien*, 391 U.S. 367 (1968), in no sense justifies the indiscriminate inhibitions of the FECA, which in fact permits the demonstrated abuses to continue.

Appellees in effect contend that there is no limit on Congress' power to regulate contributions; that contributions simply have no constitutional protection (AG Br. II 62). The reasons advanced for this conclusion are patently insufficient.

One argument is that contributions are not necessarily used for speech purposes: "[s]ome will go to pay rent, some to conduct polls, some to pay travel expenses and salary, and some to cover the cost of public communications" (SK Br. 55). But all those activities are essential to political communication and are therefore constitutionally protected.

Every campaign expenditure is devoted either to direct communication with the voters or to ancillary purposes necessary to make political speech effective.

It is also argued that a limit on large contributions will provide access to many presently excluded from political participation (IA Br. 67-74).[24] This argument is hardly consistent with the attitude appellees exhibit toward the important function large contributions play in providing seed money to newcomers (*id.* 120-29). Appellees are perfectly content to see those who would otherwise have had an opportunity to expose their ideas to the public fully silenced and excluded. Indeed, large contributions themselves are frequently indispensable to public participation in campaigns. For example, the 1968 McCarthy campaign in New Hampshire involved the widespread participation of many volunteers. Yet it is clear from the record that if Senator McCarthy had not been enabled by large contributions to wage a viable campaign, such participation would not have occurred. (See A. Br. 127-38.) Similarly, the Scott-Kennedy brief, in defending 18 U.S.C. § 608(e), would prohibit those who now sign advertisements paid for by others which support or attack candidates from that form of participation.

In no sense does a limitation on contributions enlarge the access of others to political activity. Rather it silences the contributor and all those other participants whose opportunities would have been enlarged by the contribution. Large contributions increase political communication and thereby increase participation of citizens in politics. (See A. Br. 119-20.)

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[24] But *everyone* is excluded from such participation in general-election presidential campaigns by the federal-subsidy provisions. See pp. 56-57, *infra*. And the interests appellees represent are trying to extend that exclusion to congressional elections as well. See, *e.g.*, SK Br. 50-51 n. 41.

The argument that "equality" is somehow promoted by, and thus justifies, the FECA, is an impermissible rationale because it is not "unrelated to the suppression of free expression," *United States* v. *O'Brien*, *supra*, 391 U.S. at 377. Rather it falls within the admittedly unconstitutional examples mentioned by *amici* (SK Br. 29), such as limiting the amount of newsprint which might be bought in order to equalize the volume of news coverage, the number of readers, or the amount of influence the newspaper exerts. Indeed, *Miami Herald Publishing Co.* v. *Tornillo*, *supra*, involved the classic example of a statute designed to redress inequality in the ability to engage in political communication resulting from aggregated wealth; this Court held the statute unconstitutional.

Appellees' final argument relates to the obligations large contributions are thought to create (IA Br.79-81).[25] To the extent such obligations involve an illegal *quid pro quo* or other corruption, appellants have demonstrated in their main brief that far less intrusive, and far more efficient, means are either already available[26] or could be fashioned (A. Br. 75-78).

Appellees also appear to argue that any large contribution creates a political obligation so substantial as to require regulation (IA Br. 128). Indeed, it is suggested that, if a candidate received seed money from large con-

[25] Nothing in the record supports intervening appellees' insinuation (IA Br. 46) that large contributors are "generally" not disinterested. In fact, quite the opposite is true: money tends to follow philosophical inclinations. See A. Br. 65-66. The Scott-Kennedy brief is candid enough to concede that even more narrowly drawn statutes would largely ban "transactions which would be seen as wholly innocent if all the facts were known" (SK Br. 52).

[26] For example, if a jury believed Herbert Kalmbach's version of the dairy industry's 1972 contributions, IA Br. 48-49, it would convict those involved under the "unlawful gratuity" statute applied in United States v. Brewster, 408 U.S. 501 (1972).

tributors and was successful in his campaign, he will "be forever obligated to them" *id.*[27] This argument not only is overdrawn and basically anti-democratic, but also distorts the political process. Politicians seek votes, not money. They employ contributions in order to communicate with voters and to persuade them to vote for them. Their obligations upon election are in every sense to those voters, and acts inconsistent with those obligations, or perceived as inconsistent, will be at a political price.

What is necessary is that the voters have full and complete information as to the major sources of a candidate's support so that candidates will be fully sensitive to their primary obligation and cannot covertly act inconsistently with the interests of their constituents.[28] Those representatives who fail to act in the interests of their constituents can be penalized through democratic means. The FECA assumes that the voters are incapable of making rational decisions, and that those who know better can by law change the outcome. The First Amendment is a bulwark against such self-interested paternalism.

B. *The Particular Limitations on Contributions Have Not Been and Cannot Be Constitutionally Justified.*

The limits on contributions, like those on expenditures, are not even facially evenhanded (A. Br. 127-38). They do not affect the millions of dollars which finance congressional perquisites every year. Nor do they regulate

[27] The same reasoning would require prohibiting newspaper editorial endorsements of candidates, which may have far more influence with voters than the communication permitted by a contribution, and thus on appellees' theory create a far greater obligation.

[28] The suggestion that "since the turn of the century" (AG Br. II 32) disclosure has been tried and found inadequate is ludicrous. There were no even remotely effective disclosure requirements until the 1971 FECA.

or limit the large undisclosed contributions which presently go to congressional "office accounts" and which have political value. Again, appellees ask this Court to ignore the political environment into which the challenged legislation has been placed.[29]

Beyond that, the limits on individual contributions are highly discriminatory and, in effect, a regulation of the content of speech in view of 18 U.S.C. § 608(b)(2), which permits political committees, tailored to the needs of organized economic interest groups and susceptible of unlimited proliferation, to contribute up to $5,000 to candidates. So too, rigid limits on contributions by individuals and less well-organized groups serve to regulate content when more generous giving by unions and corporations is permitted. 18 U.S.C. §§ 610, 611. See *Police Dep't of Chicago* v. *Mosley*, *supra*. While contributions and expenditures by union and corporate "segregated funds" are subject to the limits, Sections 610 and 608 (e) (2) (B) *exempt from all limits* "communications by a corporation to its stockholders and their families or by a labor organization to its members and their families on any subject." Thus such favored organizations can (1) spend unlimited amounts to try to persuade their members to vote for a specific candidate, and (2) spend unlimited amounts seeking to induce their members to contribute to segregated funds. Both types of expenditures are illegal, if in excess of the limits, when made by anyone except those favored groups.

Finally, appellees have no answer to our contention that the stringent limits on individual contributions — not to be

[29] Intervening appellees falsely accuse us of misrepresenting the ABA Special Committee's position; they do so by directly misquoting what we said (IA Br. 88 n. 99; see A. Br. 75 n. 7). As to contributions, the ABA Committee endorsed "reasonable" limits but did not conclude that the FECA limits are reasonable.

adjusted for inflation like the expenditure limits, an anomaly appellees make no attempt to defend — will make it far more difficult for newcomers to enter the political process. Under the FECA the wealthy, as the Court of Appeals concluded (op. at 1533), will have little trouble raising "seed money," since the amount which a family can put to political use on behalf of a family member far exceeds that which can be put to use on behalf of other candidates. Compare 18 U.S.C. § 608 (a) with *id.* § 608 (b) (1). Incumbents, moreover, also have substantial resources to serve as seed money, including cash on hand from previous campaigns, mailing lists and the ability to raise funds ahead of a campaign. New York Times, Oct. 28, 1975, at 10, col. 2. (See A. Br. 130-31.)

Those who are effectively silenced are less wealthy newcomers who will be unable, given the difficulty and expense of raising small contributions through direct mailing, to get started. The record demonstrates two propositions beyond doubt. First, "seed" or "up front" money is essential to a viable candidacy (A. Br. 131-38). Second, the raising of small contributions through means such as direct mail is extremely expensive and costs at least 40 percent of that which is raised, a figure based on experience when fewer candidates were utilizing that method and which may now therefore be too low. Findings II, B-50, p. 203; App. II B 582. The effect of the contribution limits, therefore, is to make the expenditure limits even lower because fund-raising costs are included within them and the 20-percent-figure employed by the FECA is woefully inadequate.

Thus, in the case of Senator McGovern, upon which appellees continue to rely, the initial mailing was financed largely by contributions which would be illegal under the FECA. By the time of the New Hampshire primary only the amounts raised in large contributions over and above his mailing permitted him to wage a vigorous campaign. (See

A. Br. 135-36.) The *only* example arguably to the contrary is Ramsey Clark (a losing candidate, who received 38 percent of the vote). Mr. Clark had advantages not available to the typical challenger. He was well known and had a substantial constituency in New York State. The fact that he had severe difficulties in budgeting and raising money itself demonstrates what a heavy burden the limits on contributions will place on challengers to incumbents. (See A. Br. 134-35.)

Nor do the records of the candidates for the Presidency in 1976 help appellees, who list the amounts those candidates have raised to date (IA Br. 122-23.) In the chart below we list what they raised *and their present cash balances as of September 30:* *

CANDIDATE	MONEY RAISED '74-'75	CASH BALANCE
George Wallace	$2,971,698	$ 659,125
Henry Jackson	2,946,633	1,242,345
Lloyd Bentsen	805,258	194,869
Gerald Ford	706,926	427,606
Morris Udall	599,405	(-85,275)
Jimmy Carter	504,587	15,036
Ronald Reagan	396,463	(-90,130)
Terry Sanford	271,972	(-67,587)
Sargent Shriver	189,725	66,919
Fred Harris**	130,324	(-12,151)
Milton Shapp	101,338	20,405
Birch Bayh	81,782	60,399
Eugene McCarthy	78,600	7,323
Julian Bond	11,423	— —

*Washington Post, Oct. 15, 1975, at A3, col. 1.

**Includes national committee only and excludes 13 smaller state committees. Washington Post, Oct. 15, 1975, at A3, col. 1

At this stage of the campaign, a candidate would normally be accumulating a war-chest, not dissipating his money almost as fast as he receives it in a desperate attempt to

raise more small contributions. Clearly the contribution limits impose an onerous burden even on well-known candidates. Informed comment indicates that even the receipt of federal subsidies will not save many or most of the candidates from being driven out of the race at an early stage by financial starvation resulting from the contribution limits. Washington Post, Oct. 19, 1975, at A 1, col. 6; *id.*, Oct. 20, 1975, at A 1 col. 4; New York Times, Oct. 25, 1925, at 44 col. 2. Every indication is that the new law is making money *more* important in campaigns, not less so as it was supposed to do.

Finally, the Scott-Kennedy brief seeks to justify grossly discriminatory provisions permitting extensive use of family wealth on the grounds that the "emotional" concerns differ as between persons who are related to candidates and those who are not (SK Br. 72-73). Such a distinction seems to imply that for some unstated reason the First Amendment values genealogy over philosophy or ideology. This statute on its face disadvantages poor candidates by limiting their ability to seek funds in sizable amounts while permitting the extensive use of family funds by wealthy candidates. This is not only blatantly in violation of the First Amendment but totally inconsistent with appellees' rationale that this statute will open access to the political process.

Both on its face and in its operation, therefore, the FECA discriminates against newcomers and challengers to incumbents. Indeed, the discrimination is such as to amount to a regulation on the content as well as the quantity of political communication. *Police Dep't of Chicago* v. *Mosley, supra.*

VII.

Appellees Have Failed To Demonstrate Any Basis For Sustaining the Federal Subsidy Provisions of Subtitle H.

A. Funding Campaign Activities by Direct Payment to Candidates or Parties Is Unconstitutional.

We contend that no form of direct federal payments to political parties or candidates is constitutional because such payments are contrary to the "general welfare" and because of the constitutional perils inherent in establishing the existing two major political parties (A. Br. 145-52).[30] Appellees assert that such federal funding is not offensive to the First Amendment, and that Subtitle H neither establishes political parties nor excessively entangles the government in political affairs (IA Br. 186-93; AG Br. II 63-67). They argue that because the government has, in certain isolated instances,[31] attempted to foster expression by

[30] If either the contribution or expenditure limits, or both, are held unconstitutional, the federal-subsidy provisions must fall even apart from the arguments made in this section. The interrelationship between expenditure limits and federal subsidies was well understood by Congress. Senator Pell, Chairman of the Senate subcommittee that considered S. 3044 and one of the Senate floor managers of the legislation, stated that the two sets of provisions were like "the warp and the woof." 120 Cong. Rec. S. 4439 (daily ed. March 26, 1974). The relationship is equally close between contribution limits and federal subsidies. (See AG Br. I 101.)

[31] Intervening appellees cite "tax incentives to organizations devoted to developing and disseminating ideas" (IA Br. 190) as one such instance. However, tax credits and deductions in such circumstances support appellants' analogy to the case law construing the First Amendment's prohibition against establishing religion. Tax exemptions for religious organizations have been upheld, Walz v. Tax Commission, 397 U.S. 664 (1970), even while direct subsidization of sectarian schools has been struck down, Meek v. Pittenger, 421 U.S. 349 (1975). See Bittker, "Churches, Taxes and the Constitution," 78 Yale L.J. 1285 (1969).

private citizens, the government is also permitted to intervene massively in the electoral process through Subtitle H.

Citing *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966), appellees argue that because Subtitle H is "ameliorative" its restrictions should be subject to a standard of review less strict than that for which appellants argue (IA Br. 193-94). They are incorrect. As Professor Ely has said: "The old saw that the government can 'deal with one part of a problem at a time' surely has no application in first amendment cases. See, *e.g.*, *Police Dep't* v. *Mosley*, 408 U.S. 92 (1972)." Ely, "Flag Desecration: A Case Study in the Roles of Categorization and Balancing in First Amendment Analysis," 88 Harv. L. Rev. 1482, 1503 n. 83 (1975). Where government action trenches on an area explicitly protected by a constitutional restraint, the certainty with which that intervention could be characterized as "ameliorative" is simply not present. Thus in *Katzenbach*, *supra*, this Court declared that Congress, in the Voting Rights Act of 1965, adopted a measure to enforce the guarantees of the Fourteenth Amendment, 384 U.S. at 651 n. 10, but emphasized that Section 5 of that Amendment gave Congress "no power to restrict, abrogate, or dilute these guarantees." *Id.* Here, the First Amendment bars an abridgment of freedoms of speech and association whether or not the statute is labeled "ameliorative" or anything else.

Appellees incorrectly imply that we have argued that establishment-clause inhibitions should be automatically applied so as to keep government out of the entire area of communication and opinion to the same extent that the First Amendment keeps it out of religion (IA Br. 190, AG Br. II 64). We make no such contention. We do contend that the similarities between partisan politics and religion are so great that the same concerns that protect religious liberty should also protect political liberty, and that the necessity of avoiding governmental dominance and en-

tanglement is likewise comparable as between religion and partisan political activity. Politics, like religion, involves deeply held beliefs about the nature of society. Politics, like religion, can be and often is a source of divisiveness and dispute. Politics, like religion, involves the competition of ideas and philosophies. Since a time well prior to the adoption of the Constitution, political disputes have been, and are, far more likely than religious conflict to lead to unrest, disorder and even revolution if government is perceived as preventing free and open popular choice. Subsidizing some points of view but not others violates elemental fairness, and in effect inhibits the rights of the disfavored groups to freedom of speech and association, just as much in the political area as in the religious.

For all these reasons and those set forth in our opening brief (pp. 145-52), we think that the First Amendment, the general-welfare clause, the Fifth Amendment, and indeed the provisions of Articles I and II which require free and fair elections, all demand, together if not separately, a holding that Congress may not establish political parties.

Appellees insist elsewhere in their briefs that they are concerned about improper appearances and the adverse effects such appearances have on public confidence in government (IA Br. 105-07). When they come to federal subsidies, however, their concern for appearances abruptly vanishes. They ignore the obvious fact that in politics, as in religion, even the taint of suspicion that government is not acting evenhandedly must have the most devastating impact on the public perception of government's integrity.

Likewise, one of appellees' principal justifications for expenditure and contribution limitations — that they open up the political process and make elections more democratic by compelling candidates to "invite the ordinary citizen to take an active part in the campaign"[32] — falls by the

[32] AG Br. II 34. To the same effect see IA Br. 85-86; *cf.* SK Br. 44-45.

wayside when the federal-subsidy scheme is added to the package. In any campaign[33] entirely funded by public money, the opportunity for all citizens, ordinary or not, to participate financially and thus to implement their views is reduced to zero. As Senator Robert Kennedy testified in 1967:

> "To aid campaigns by direct subsidy from the Treasury would only further separate the individual citizen from the political process — insulating the party organization from any need to reach citizens, except through the one way communication of television and advertising. The political parties would talk to the citizen; but the individual could not effectively talk back." *Political Campaign Financing Proposals*, Hearings Before the Senate Committee on Finance 247-48, 90th Cong., 1st Sess. (1967).

Indeed, public financing could well induce candidates, relieved of all need to arouse the intense public interest that stimulates contributions, to engage in a race as bland, noncontroversial and noncommittal as possible — knowing that, no matter how low voter interest and participation became, a majority of one among whoever turned out on election day would be enough for victory.[34] Such a result would be recognizably similar to the conformist apathy and sluggishness that have frequently characterized religious life in countries with established churches. In the political arena, like the religious, establishment is the antithesis of free, healthy democratic life. Apathy on the one hand, and on the other hand sullen unrest perhaps amounting to violence from those excluded from the establishment.

[33] As *amici* admit, the interests represented by appellees are now vigorously seeking extension of federal subsidies to congressional elections (SK Br. 50-51 n. 41).

[34] The Attorney General recognizes this as a distinct possibility (AG Br. I 94). We think it highly probable.

would be an ironic consequence of political "reform." The political equivalent of religious life in Czarist Russia or 19th-century Spain may be appellees' idea of freedom and health; it is not that of the Constitution.

In attempting to deal with the effects Subtitle H would have had in past elections, appellees unwittingly reveal the dangers of entanglement between the government and political parties in this supposedly "ameliorative" statute (A. Br. 149-52).[35] Appellees argue, for instance, that "[i]f a Bull Moose phenomenon occurs in 1976, it will be time enough then for Congress to make any necessary adjustments for 1980 . . ." (IA Br. 207). It is precisely because of the continuing problem of congressional reappraisal of "who gets what, when and how" from Subtitle H that excessive federal entanglement is an insoluble problem so long as direct payments to candidates or parties are employed. Nothing in any of the briefs defending Subtitle H in any way rebuts this proposition.

The Scott-Kennedy brief poses the dilemma of a major-party schism (SK Br. 100). It offers as the "best" solution giving both wings of the split party full federal financing, a solution nowhere suggested by Chapter 95, but concedes that if such a solution is not authorized " . . . Congress will have to deal [with the gap] if the occasion

[35] Intervening appellees' citation from Professor Chafee in support of their argument, IA Br. 192, brings new meaning to the phrase "quoted out of context." The "essential facilities" Professor Chafee thought the government should supply were (1) a post office and (2) certain Army and Navy international-communication facilities to be made available for private use. Chafee, Government and Mass Communication 479-84 (1947). Indeed Professor Chafee provides a strong warning *against* Subtitle H: "Every new governmental activity in relation to the communication of news and ideas, however laudable its purpose, tends to undermine this tradition [that the government should keep its hands off the press] and render further activities easier . . . Appetite grows by what it feeds on." *Id.* at 477.

should arise." *Id.* What worse possible time could there be to call an intensely partisan Congress back into session to "deal" with or about such a problem? The Scott-Kennedy example plainly demonstrates why this Court should consider the issues now, and why it should avoid continuous and massive government entanglement in politics by declaring Chapter 95 unconstitutional.

All appellees' briefs are conspicuously silent as to the spectre posed if only one party should receive over 25 percent of the vote, as almost happened in 1860, 1912 and 1924 (A. Br. 153 n. 10). The resulting gross disparity in federal funding for the next election, which obviously would tend strongly towards creating a permanent one-party system, would hardly be likely to be "corrected" by a Congress presumably composed heavily of that very party.[36] This further confirms the danger of governmental entanglement in the partisan political process. It also highlights the significance of appellees' concession that just such continuing, *ad hoc* congressional entanglement is the only way in which the Act's obvious unacceptability as applied to various perfectly foreseeable situations could be relieved.

B. Appellees Have Failed To Demonstrate That Chapter 95's Operation Is Not Discriminatory Against Minor and New Parties and Independent Candidates.

We make no contention that any scheme of election financing would have to treat every announced candidate

[36] Nor, if appellees prevail here, would it appear that the "not while this Court sits" rationale (SK Br. 87) could be used to strike down the statute *at that time*. If a bias with respect to federal funding in favor of *two* "major" parties as against all others does not violate the First Amendment for reasons analogous to those behind the establishment clause, it is hard to see how a different result could be arrived at on a principled basis merely because the number of established parties as defined by the statute had been reduced by popular-vote developments from two to one.

with mathematical equality. Nor do we deny the real benefits of a two-party system or contend that a financing scheme is unconstitutionally discriminatory unless it makes other parties *better* off than they have been in the past. We do think it is clear that Congress may not, through discriminatorily allocated subsidies, entrench the two major parties in ways going beyond the perfectly legitimate dominance they have won in a free system through their own efforts and performance. Yet that is what the legislation does.

Intervening appellees claim that "[t]he statute in no way enshrines any particular parties . . ." (IA Br. 200). Intervening appellees appear ambivalent as to whether Chapter 95 offers two alternative routes (IA Br. 210) or only one (IA Br. 213) to obtain effective federal subsidies. If they are arguing that Chapter 95 provides two paths, they are wrong for the reasons stated at A. Br. 157-61 and AG Br. I 100. If they are arguing that Chapter 95 provides only one route (presently available only to candidates of the Democratic and Republican parties), they are most certainly correct. If they are arguing further that the government has thereby met its constitutional responsibilities, they have misperceived the correct standard of review. *Cf. Shapiro* v. *Thompson*, 394 U.S. 618 (1969); *Memorial Hospital* v. *Maricopa County*, 415 U.S. 250 (1974).

The recipients of the "benefits" of Chapter 95 are clear. For all the statutory definitions of "major," "minor," and "new" parties, and for all the language in appellees' briefs about what minor and new parties are "entitled" to, one stark fact remains. In 1976, the Republican and Democratic parties will, before the November election, receive more than $44,000,000 to be split evenly between them for their presidential campaigns and national nominating conventions, and *no other party will receive anything until after the election, if at all.* Faced with that kind of "benefit," new parties and independent candidates

hardly require "detriments" to make their tasks onerous, and their chances for success remote. It is hard to imagine a scheme more pointedly designed to "favor[ ] two particular parties," *Williams* v. *Rhodes*, 393 U.S. 23, 32 (1968), over minor and new parties and independent campaigns struggling to be born.[37]

The weaknesses of appellees' argument are apparent when they belittle the means less intrusive than Subtitle H by which federal subsidies might be allocated (*e.g.*, IA Br. 212). They reject, for instance, as "impractical" the suggestion that the five-percent threshold of eligibility[38] for federal funding to minor parties could be met by a petition drive so as to give new parties some genuine means by

[37] On the basis of Williams v. Rhodes, it was predicted as early as 1969 that the Long Act, the predecessor of Chapter 95 which had generally similar allocation provisions, would be held unconstitutional in view of "the advantages the two major parties provided for themselves." Casper, "Williams v. Rhodes and Public Financing of Political Parties under the American and German Constitutions," 1969 Supreme Court Review 271, 284.

[38] In support of the five-percent requirement, appellees cite Jenness v. Fortson, 403 U.S. 431 (1971) (IA Br. 208-09). As the Attorney General has pointed out, the five percent required here is actually far higher than that in *Jenness*, since it must be accumulated from among a much smaller portion of the electorate, *i.e.*, those not voting for other candidates (AG I Br. 102). Moreover, the five-percent figure cannot be viewed in isolation, but must be considered as one element in the totality of discriminatory provisions adversely affecting new and minor parties and independent candidates, Williams v. Rhodes, 393 U.S. 23, 34 (1968). This totality includes not only the other discriminatory features of Chapter 95, but also the adverse effects of contribution and expenditure limits and sweeping disclosure requirements (A. Br. 94-106, 127-38, 178-84). Moreover, the statute upheld in *Jenness permitted* a petition drive; that decision can hardly support a statute which allows no such drive but unblinkingly denies new parties any way to escape the dead hand of prior-election statistics. Finally, being denied federal funding is *worse* than being left off the ballot; write-in candidates sometimes win, but unfinanced candidates never do. See A. Br. 158.

which their non-appearance in four-year old election results could be overcome. *Id.* They give no reasons, but cite only to the Court of Appeals opinion. That opinion states merely:

> "Evidencing support by petition signatures may provide an objective and more current measure but again it would siphon off considerable campaign energies into a petition drive" (op. at 1564).

There are several answers. First, independent candidates like Senator McCarthy and third parties often *now* must engage in petition drives to obtain a place on state ballots; their petition drives for federal subsidies would at most be no more than an adjunct to the ballot drives. Indeed there seems no reason why they should not be allowed to use their state-ballot petitions, monitored and checked by state officials (who are unlikely to be over-indulgent[39]), to qualify for federal funding.

Second, if federal subsidies are as highly desirable, and private fund raising as suspect and burdensome as appellees contend, one would think they would prefer to have new parties and independent candidates concentrating "considerable campaign energies" on a petition drive rather than concentrating those same energies exclusively on private fund raising.

Third, no party would be *obliged* to conduct such a drive; surely the decision as to whether the party's interests lie there or elsewhere is best made by the party itself rather than by Congress in denying the alternative altogether.

Fourth, how burdensome such a drive would be would depend entirely on the number of signatures Congress

[39] See Note, "Election Administration in New York City: Pruning the Political Thicket," 84 Yale L.J. 61 (1974); Reitman and Davidson, The Election Process: Voting Laws and Procedures 94-99 (1972); Mahoney, Actions Speak Louder 68-94 (1968).

required; if its judgment was that one signature obtained on a petition is more burdensome to obtain, and thus indicates greater seriousness and popular support, than one vote in the previous election, it could of course set the percentage of signatures required at a figure lower than the five percent required for prior-election performance. Thus appellees' objections to a petition drive as an alternative way to demonstrate "seriousness" for Chapter 95 purposes turn out to be wholly chimerical.[40]

Appellees point out that public funds need not be distributed to every citizen who chooses to declare himself a presidential candidate; we agree. Appellees leap from this statement of the obvious to the conclusion that Congress may draw an arbitrary line between "major" and "minor" political parties at 25 percent of the popular vote (IA Br. 210-11). It may be true that, as they suggest, once a line is necessary some arbitrary effects must be tolerated. But appellees never ask why a line dividing major and minor parties must be drawn at all. The party with the highest vote total could be given the full $20,000,000 subsidy, and all other parties exceeding some initial threshold (either by

[40] Equally illusory are appellees' objections to a tax check-off system whereby taxpayers designate the party or candidate to whom they want their tax dollar to go (AG Br. II 66; IA Br. 218-19). Appellees argue that taxpayers will not know who the presidential nominees are when they check off on their tax returns. Aside from the fact that precisely the same problem affects the *existing* tax check-off system, it is in fact easily remediable. The check-off form, which could be sent to taxpayers only in presidential election years rather than annually, and which could be in the amount of $4 rather than $1 (as I.R.C. § 6096 now provides), could be returnable for transfer of money into the subsidy fund until some point after the presidential nominating conventions take place. Separating the check-off form from the income tax return would also overcome another of appellees' objection, that political preferences should not be known to persons examining tax returns (IA Br. 219). These relatively simple changes would alleviate immense constitutional deficiencies.

prior-vote record or by petition) given amounts equivalent to the ratio of their candidates' votes to that of the highest vote-getter. Thus, because of the closeness of the 1960 election, Republicans and Democrats would have received almost identical amounts in 1964. Even following the recent elections with the greatest disparity in votes (1964 and 1972), the Republicans in 1968 and the Democrats in 1976 would still receive two-thirds of what the other major party would receive. Appellees are so ready to consign minor parties to private fund raising that they should have no objection to the same treatment of major parties where that is appropriate.

Such a solution could well entail severe constitutional problems; our basic point is that *no* method of allocating federal funds among political parties avoids such problems. (See A. Br. 150.) The choice Congress made unfairly disadvantages minor parties vis-a-vis the two major parties; the alternative would run the risk of further entrenching the most popular party by giving it more federal money than any of its competitors. The fact that the dilemma is inescapable should lead to a conclusion that direct federal funding of partisan campaigns is unconstitutional no matter how structured. *Cf. Miami Herald Publishing Co.* v. *Tornillo, supra.*

Appellees' briefs are replete with historical inaccuracies and mistaken conclusions. Intervening appellees attempt to rebut appellants' reference to Abraham Lincoln's grave as "just another burial plot in the cemetery" by pointing out that in the 1856 election the Republicans received one-third of the vote (IA Br. 206; SK Br. 97). That response completely misses the point. The crucial effects of public financing would have occurred in 1856, when John C. Fremont, running as the candidate of the new Republican Party would have been denied public funds. Chapter 95 would have completely funded the Democrats and the dying Whigs, but would have given not a pre-election penny to Fremont. In

all probability, that would have aborted his candidacy and the Republican Party in that year.[41]

The Scott-Kennedy brief goes to considerable length to demonstrate how beneficial Chapter 95 would have been in 1972 to the American Independent Party and its candidate, John Schmitz (SK Br. 98-99). The effort merely furnishes a present-day example that, as it would have done with the Whigs in 1856, Chapter 95 irrationally *preserves* third parties after their normal life expectancy. The dissent below noted this element of capriciousness (op. at 1606, dissent). See A. Br. 152-53.[42]

We submit that legislation producing such arbitrary, irrational and discriminatory effects cannot be sustained under either the First or the Fifth Amendment.

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[41] Such artificial preservation of the Whigs for at least one election, with little public support but rich sinecures and revenues, is reminiscent of the status of the established Anglican churches of Ireland and Wales — rich but empty — for generations after their popular support had virtually disappeared.

[42] The Scott-Kennedy brief erroneously states that the only newly formed party to have surpassed established parties was the Republican Party (SK Br. 97). The Whigs did the same thing in the elections of 1836 and 1840. The brief also states that the "Progressive Socialists" (presumably meaning the Progressive Party) "would have received 17 percent in arrears" after the 1924 election, *id.*; in fact, the Progressives would have received almost 41 percent of what the major parties received had Chapter 95 been in effect, and an equal amount in 1928, though they were not an on-going party — yet another example of how the dead hand of the past would distort the political process. The brief further errs in stating that only four candidates of new or minor parties have ever received over five percent of the popular vote. *Id.* In fact five other such parties have exceeded that threshold: National Republican (1828), Anti-Masonic (1832), Free Soil (1848), Constitutional Union (1860), and Socialist (1912). Findings I, 85 pp. 38-43; App. II A 35-42. Each of these parties would have had no pre-election federal subsidies in the years when they had substantial popular appeal, but *would* have received subsidies in subsequent years when their support had vanished.

Intervening appellees note that neither of the two major parties challenges Chapter 95 (IA Br. 199). Why should they? The Republican Party is even now preparing to take full advantage of the $22,000,000 federal subsidy by raising large sums of money that no longer need be used in presidential campaigns and applying it in congressional races. Broder, "The GOP's Financial 'Loophole,' " Washington Post, Sept. 14, 1975, at B 6, col. 3. Minor and new parties and independent candidates who do not share in the Chapter 95 bonanza are thus disadvantaged at the congressional level as well as in the presidential campaign itself.

Appellees' contention (*e.g.*, IA Br. 215) that minor and new parties and independent candidates will be better off under Chapter 95 than under the traditional system is belied by the fact that eight such parties[43] and candidates[44] or interests affiliated with them[45] are attacking the statute here, either as appellants or as *amici*. Not one such party or candidate has come forward to support these provisions. They are better judges of their interests, surely, than appellees.

Appellees concede *sub silentio*[46] that, as we pointed out (A. Br. 154 n. 12), post-election subsidies are available only to the extent that their expenditures have been made with borrowed money. This is a crippling restriction, and a wholly unnecessary one: why should the qualifying party or candidate not receive his full entitlement, to be used for

[43] Appellants Conservative Party of New York and Libertarian Party; *amici* Socialist Labor Party, Governor Longley of Maine, and California Peace and Freedom Party.

[44] Appellant Eugene McCarthy.

[45] Appellants James Buckley and Committee for a Constitutional Presidency-McCarthy '76.

[46] The Justice Department verges on explicitness. See AG Br. II 83.

general political purposes and preparation for the next election? As Senator Metcalf cogently demonstrates (Metcalf Br. 23-25), under Chapter 95 such parties and candidates are *penalized* for raising private contributions, since only if they *fail* to raise them but instead rely on credit can they become entitled to any post-election funds. This is utterly irrational, and in stark contrast to the *rewards* bestowed by Chapter 96 on major-party candidates for raising private funds in the pre-convention period.[47]

Finally, appellees' argument (IA Br. 223-225) that independent candidates such as appellant McCarthy are not denied any general-election financing is wholly incorrect. Even aside from the unlikelihood that such a candidate will have a prior-vote record, and the statutory denial to him of any way to qualify by petition, Chapter 95 expressly administers the coup de grace by denying him funding *merely*

[47] Moreover, the lack of access of third parties and independent candidates to substantial credit will usually reduce their "entitlement" to a nullity as a practical matter. The notion that banks will accept public-opinion polls as an indication of minor-party strength, on the basis of which they will lend money, SK Br. 94, is so fanciful that it hardly deserves comment. Third-party election-day performance is frequently considerably different from what the polls have indicated. See, *e.g.*, Mazmanian, Third Parties in Presidential Elections 96 (1974). Banks would be further discouraged by the complete uncertainty as to whether even a party which qualifies for post-election funding will in fact receive it, since the Secretary of the Treasury may not reserve adequate (or any) funds for that purpose. (See pp. 70-73, *infra*.)

Intervening appellees' argument that "ordinary bank loans are available without regard to the contribution limits in Section 608," IA Br. 214, is disingenuous. Bank loans that are endorsed or guaranteed are counted as contributions by the endorsers or guarantors, 18 U.S.C. §591(e)(1). Any bank obviously desires repayment of the loans it makes and, given the ephemeral nature of the political campaign organization, will almost certainly seek assurances to that end. Bank loans, therefore, will be subject to the same severe limitations as direct monetary contributions, with precisely the same harmful effects on minor and new parties and independent candidates.

because he is not the candidate of a party. The argument that the Committee for a Constitutional Presidency-McCarthy '76 could qualify as a "party" is simply wrong. The definition of *party* on which appellees rely (IA Br. 224) expressly requires that the candidate's name "appears on the election ballot as the candidate of" the group supporting his candidacy. McCarthy has no intention of allowing any party's name to appear on ballots in connection with his name; that would, in his view, vitiate what he believes to be the advantages and attractions of a genuinely independent candidacy. Why that choice should operate to deny him federal funds passes understanding.

C. Appellees Have Failed to Demonstrate That Chapter 96 Does Not Discriminate Against Certain Candidates.

Appellants have demonstrated that Chapter 96 of the Internal Revenue Code discriminates against independent candidates by its failure to offer them any federal subsidies during the same period when candidates for party nominations for the presidency are pursuing that goal, and that the primary matching-grant formula of Chapter 96 is invidiously discriminatory (A. Br. 164-68). Appellees attempt to justify matching grants on the ground that they "allow individual citizens to indicate by their contributions which candidates are most worthy of federal assistance" (IA Br. 228).

Such a response is flatly inconsistent with appellees' position on Chapter 95's funding system for general-election campaigns — which purposefully excludes such citizen participation —, as is the quotation from Professor Rosenthal they offer in support of their position on Chapter 96 (IA Br. 230). To defend the matching-grant system, appellees fall into the same inconsistency as the courts below (see A. Br. 168): they are forced to defend the role of private contributions, an exercise which is directly contrary to almost every page in the other sections of their briefs. They

are, moreover, forced to depart from the "one man, one vote" exhortations earlier in their brief (IA Br. 67-74). If they truly believed "one man, one vote" principles are applicable to the regulation of campaign financing, they would be arguing that federal subsidies should be dispensed based on the number of *contributors* to a candidate (*e.g.*, $5 of government subsidy per contributor without regard to the size of the contribution), rather than on the size of the contribution. Finally, appellees argue that the "20-state requirement has invigorated the early stages of presidential campaigns" because candidates are now spending extensive amounts of time raising funds (IA Br. 233). Earlier in their brief, however, intervening appellees were *decrying* the extensive amounts of time that candidates spent in precisely the same activity (*id.*, 72-73).

Chapter 96 has not produced the effects its supporters claim. Reporting on the contest for the 1976 Democratic presidential nomination, one skilled political reporter has written:

> "When Congress provided public financing for 1976 presidential candidates, through federal matching grants for small contributions, the belief was that it would erase the competitive advantage of the well-off candidate.
>
> "But at this stage of the Democratic nomination race, the greatest disparity between the contenders is financial. Two are affluent and the rest are struggling. And a growing number of participants in the race believe that the dollar squeeze may narrow the Democratic field faster than any other force." Washington Post, Oct. 19, 1975, at A 1, col. 6.

Experience is rapidly demonstrating that the FECA contribution limits are so crippling that even candidates who

qualify for matching funds will not be able to survive unless they win one or more of the very earliest primaries. See also Washington Post, Oct. 20, 1975, at A 1, col. 4. What "beneficial" effects Chapter 96 has had are thus dubious in the extreme. Its discriminatory effects, on the other hand, are plain and substantial.

All of the pulling and tugging by appellees, and all the inconsistencies in their arguments, indicate the severe problems inherent in attempting to justify Chapter 96 (and Chapter 95 as well). There need be no hesitation by this Court in striking down so constitutionally defective a scheme. Presidential campaigns now under way could readily adapt to a political world without Subtitle H. No funds have yet been distributed, and none will be until January 1, 1976, at the earliest. On the other hand, almost unimaginable practical problems could arise if the Court took appellees' advice and sustained this legislation, only to be confronted a few years hence with emergency challenges, perhaps in mid-election year, to hasty congressional tinkering with the statute in response to such a development as a major-party split which appellees admit the existing statute could not accommodate.

D. Appellees Have Failed To Refute Our Contention That the Federal Subsidy Provisions Vest Impermissible Discretion in the Secretary of the Treasury.

Appellees admit (*e.g.*, IA Br. 185) that, if the amount in the Fund were inadequate to satisfy the full entitlements of eligible candidates, problems of projections and priorities would arise. These must be resolved by the Secretary of the Treasury, a political appointee of a major party, who must look into a crystal ball many months prior to the election and prophesy, for example, whether any minor or new parties or independent candidates will be entitled to post-election funding on the basis of their election-day performance (I.R.C. §§ 9006(d), 9037). If he guesses wrong, they can receive nothing even though clearly entitled to it. He must make his decision during or before January 1976, since that is the month in which the matching grants to candidates for nominations become payable, and they have the *lowest* priority under the statute, I.R.C. § 9037; they should not be paid in full if funds will be inadequate to meet higher-prior entitlements, which include post-election payments to qualifying minor and new parties and independent candidates. Thus the Secretary's decision must be made long before a realistic assessment is possible as to whether any significant third parties will compete in the election, let alone the likelihood of their exceeding five percent of the vote. Even if the designated prophet were wholly apolitical, such diaphanous projections would be fraught with perils of error and injustice. The fact that the Secretary of the Treasury is not apolitical surely does not improve the situation.

Appellees' only response is to cite a recent estimate that the Fund will contain $100 million before the 1976 election and that this amount will be adequate to meet all entitlements (IA Br. 185). There are three answers.

First, even if this were so, it would provide no guarantee that acute problems of discretion and prophecy would not arise in future years. While it is true that the present trend in exercise of the tax-return check-off is upward, that trend is not necessarily permanent — especially if, as we predict, the public becomes disenchanted with federal subsidies, and indeed with the entire statute, as their effects in practice are experienced.

Second, the Fund presently stands at only $60 million (New York Times, Oct. 16, 1975, at 24, col. 1). Fully 40 percent of the "estimated" $100 million is yet to be checked off; the assumption is that check-offs will rise from $32 million in 1975 to $40 million in 1976, but there is no

assurance that this will happen, and there will be none in January 1976 when the Secretary must act. While the present projection may be as reasonable as the circumstances permit, it is perilous to permit crucially important matters of political equality and fairness to be affected with such uncertainties and hazards for mishap.

Finally, even the projected $100 million is not necessarily adequate. Of that amount, more than $44 million[48] must be set aside for the nominating conventions and the major-party general-election subsidies. That leaves less than $56 million. At present there are ten serious candidates for the Democratic nomination and two for the Republican. If all twelve candidates should qualify for the maximum $5 million matching grant, $60 million would be required for their federal payments; moreover, additional candidates may enter the race. If the Secretary accepts appellees' view that sufficient funds for all entitlements will be available in 1976, he will pay all these requisitions in full as they are submitted, without waiting to see what the total will be. The result could be that no post-election funds would be available if one or more third-party independent candidates qualified for them. If only one such candidate did qualify (as is hardly out of the question if, for example, George Wallace chooses to run) and obtained 15 percent of the vote with, say, 40 percent as the average vote of the major parties, then he could be entitled to as much as $7.5 million, making the total demands on the Fund more than $111.5 million, as compared to the very generous projection of $100 million for what it will contain. If the Secretary exercises his discretion by not setting aside substantial funds for the contingency of a third-party entitlement, the candidate will simply go unpaid, and the gross injustices of the statute would be even further compounded.

[48] That figure will have to be adjusted upward for inflation.

Here again, it is minor and new parties and independent candidates who bear the major brunt of the uncertainties and the discriminatory and otherwise bizarre features built into this legislation. The established two major parties are most carefully protected, at least so far as the nominating conventions and the general-election period are concerned.

In the pre-nomination period, the discretion-and-prophecy mechanism also presents the possibility of discrimination among major-party candidates. If, again, the Secretary, accepting appellees' view that the 1976 Fund will be adequate to meet all entitlements, pays all requisitions in full as they are submitted, and if he proves to be wrong and the Fund runs out, nothing will be left to meet later-presented entitlements. This runs the further risk of penalizing candidates who enter the race late — perhaps in response to new developments or issues — or who begin to make an impact later than their competitors. The statute contemplates this invidious possibility with perfect equanimity, providing that the Secretary "shall take into account, in seeking to achieve an equitable distribution, the sequence in which such certifications are received" (Section 9037(b)).[49] This is only one of the many features of the challenged legislation which have greatly extended the time span of the presidential campaign, thus placing additional heavy burdens on all candidates and reducing the flexibility of our political system to respond quickly to changes in circumstances.

[49] If, as seems probable, the Secretary is simply to pay requisitions in the order they are submitted, this is like providing that income-tax refunds or welfare payments shall be made from a limited fund to the first applicants until the fund is exhausted, with late-comers, otherwise equally entitled, to get nothing. On the other hand, if the Secretary has power to make any adjustments he deems "equitable," his discretion is unconstitutionally broad, especially considering his political bias.

VIII.

Appellees Have Failed To Justify the Fundamental and Sweeping Overbreadth of the FECA's Disclosure Provisions.

A. The Blanket Disclosure Requirements Concerning Contributions to Candidates for Federal Office Have Not Been Justified.

Appellants argue that, although in principle disclosure requirements serve a valid public purpose, the FECA's particular disclosure requirements (1) sweep overbroadly across protected First Amendment associational privacy rights (A. Br. 170-77), (2) serve no compelling governmental interest when applied to third-party and independent candidates for federal office (A. Br. 178-84), and (3) establish thresholds for reporting and disclosure that lack a substantial nexus with the governmental interests alleged to justify such thresholds (A. Br. 184-92). Appellees respond that third-party and independent candidates must be subject to precisely the same standards as major-party candidates (IA Br. 176-81; AG Br. II 29-31),[50] and that the disclosure thresholds are not too low (IA Br 174-76; AG Br. II 31). Appellees never come to grips with the substantial overbreadth of the FECA's disclosure provisions. Instead, they seek to justify the Act's blanket disclosure requirements by offering a few hypothetical examples of situations where, they assert, disclosure of the identity of contributors to third-party and independent candidates would be necessary to achieve compelling governmental purposes.

[50] *Amici* Scott and Kennedy state that we "apparently concede the constitutionality of disclosure laws as applied to the two major political parties" (SK Br. 76). This statement is, of course, incorrect to the extent it implies that we agree with the reporting and disclosure thresholds of the FECA.

But these examples cannot controvert the fundamental point that the universal sweep of the FECA does substantial harm to such association, while at best achieving minimal gains for any countervailing governmental purposes.

The appellees' own statistics demonstrate that the role played by most such parties and candidates in the overall picture of federal campaign financing is marginal. (See A. Br. 182; SK Br. 12.)[51]

Our point is precisely that the vital role which the more unorthodox third parties and candidates have played, see *Sweezy* v. *New Hampshire*, 354 U.S. 234, 251 (1957), demonstrates that the application of systematic disclosure requirements to them is both destructive and purposeless. As the *amicus* Socialist Labor Party has candidly declared, it views its presidential-campaign activities as a soapbox, "another means of education of the public regarding their political, social, economic and philosophical beliefs . . . ." In short, its candidates run for office not to achieve governmental power, but to communicate their dissident views to the public. Disclosure in that context cannot constitutionally be justified.

Federal appellees in particular have misread the applicable precedents concerning freedom of association.[52]

[51] The opposing briefs are replete with references to the "stalking horse" justification for imposing disclosure requirements on minor-party and independent candidates. But only three actual examples are cited (IA Br. 179-80, n. 210), and none involved the actual secret funding of any candidate for federal office. Nor does the extensive statistical record show any excessively large or special-interest contributions to any third-party candidate. The stalking-horse problem is more illusory than real.

[52] Federal appellees spend several pages rebutting an argument appellants do not make — that the First Amendment provides an absolute right to associational privacy (AG Br. II 38-41, 43-44).

They argue that "it is a strained concept" to say that those who support a candidate "are thereby joining in a new 'association' " (AG Br. II 45), and that such association "is very distant kin to the right of assembly which the First Amendment protects" (*id.* 46). Such arguments are in flat conflict with numerous decisions of this Court involving political association. See, *e.g.*, *Sweezy* v. *New Hampshire*, 354 U.S. 234, 250 (1957); *Kusper* v. *Pontikes*, 414 U.S. 51, 56-57 (1973); *Cousins* v. *Wigoda*, 419 U.S. 477, 487 (1975); *Pollard* v. *Roberts*, 283 F. Supp. 248 (E.D. Ark. 1968), *aff'd per curiam*, 393 U.S. 14 (1968). If the most effective argument in defense of the disclosure requirements' intrusion into freedom of association is that political campaigns do not involve "association," then the case in favor of the FECA's disclosure provisions is weak indeed.[53]

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[53] Similarly unpersuasive is the novel argument of *amici* State Election Commissions that association which takes the form of a contribution to a party or candidate is not protected by the First Amendment (Br. 14-20). Asserting that the NAACP cases involved membership lists, *amici* argue that contributors, as opposed to members, have no associational privacy rights. The premise is inaccurate and the conclusion unsound. First, this Court has never suggested any such constitutional distinction between members and contributors to an organization. Indeed, many of the NAACP cases involved a government demand for records of contributors as well as for membership lists. In Bates v. Little Rock, 361 U.S. 516, 519 (1960), the challenged ordinance "would have required disclosure of the names of the organizations' members *and contributors*" (emphasis added). Gibson v. Florida Legislative Investigations Committee, 372 U.S. 539, 542 (1963); NAACP v. Alabama, 357 U.S. 449, 461 (1958). Moreover, the association doctrine has been applied to protect the identity of purchasers of books from a lobbying organization, United States v. Rumley, 345 U.S. 41 (1953); United States Servicemen's Fund v. Eastland, 488 F.2d 1252 (D.C. Cir. 1973), *rev'd on other grounds*, 421 U.S. 491 (1975), and, of course, contributions to a political party, see Pollard v. Roberts, *supra*. Freedom of association is applicable to writing a check to the candidate of one's choice no less than becoming a member of an organization which shares one's beliefs. We have earlier suggested that

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Nor do prior decisions of this Court relied on by appellees preclude our challenges to these disclosure provisions. We have indicated why neither *Burroughs* v. *United States*, 290 U.S. 534 (1934), nor *United States* v. *Harriss*, 347 U.S. 612 (1954), is controlling here (A. Br. 186-87).[54] Nor do other decisions involving different disclosure requirements in other contexts supply the proper rule.[55]

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[53] (continued)

appropriate lines governing disclosure can be drawn (A. Br. 184). The point is not whether any particular line should be drawn, but rather, that Congress failed to draw any such lines at all.

In California Bankers Association v. Schultz, 416 U.S. 21, 78 (1974), the concurring opinion of Justice Powell joined by Justice Blackmun made clear that financial contributions are eligible for constitutional protection: "Financial transactions can reveal much about a person's activities, associations, and beliefs. At some point, governmental intrusion upon these areas would implicate legitimate expectations of privacy."

[54] *Burroughs* did not, as the intervening appellees contend, "foreshadow" First Amendment analysis (IA Br. 170). Rather, the opinion accorded extensive deference to legislative choices of means to achieve particular ends, a deference which in the First Amendment area is no longer accepted. See, *e.g.*, United States v. Robel, 389 U.S. 258 (1967).

In *Harriss*, the court did observe that the "indirect" restraints of self-censorship "comparable in many ways to the restraint resulting from criminal libel laws," were too remote to warrant striking an otherwise valid enactment. Yet, in subsequent cases, the court has placed great emphasis on the need to guard against self-censorship in the areas of speech and association. See, *e.g.*, Speiser v. Randell, 357 U.S. 513, 526 (1958); New York Times Co. v. Sullivan, *supra*.

[55] Lewis Publishing Co. v. Morgan, 229 U.S. 288 (1913), upheld a statute requiring that, to receive second-class mailing privileges, publishers disclose certain limited information about their management and ownership. The requirements were held to be a valid

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Appellees wholly disregard the various standards proposed by appellants to determine which parties and candidates should be subject to disclosure of contributions.[56] (Compare A. Br. 184 with IA Br. 177-80 and AG Br. II 30-31.) The examples appellees offer — the "More Republican

[55] (continued)
condition imposed on receipt of a government benefit, insured the privilege was used only for mailing valid publications, and were justified by congressional power to classify categories of mail. New York ex rel. Bryant v. Zimmerman, 278 U.S. 63 (1928), upheld disclosure of "oath-bound" organizations such as the Ku Klux Klan, premised on the need to deter illegal and violent activities. Viereck v. United States, 318 U.S. 236 (1943), involved the Foreign Agents Registration Act, but did not squarely present a constitutional attack and in fact, reversed the conviction because the lower courts had read the statute too broadly.

Finally, the decision in Communist Party v. Subversive Activities Control Board, 367 U.S. 1 (1961), is not dispositive here. The Court's decision there was predicated on the rationale that the Communist Party was the agency of a foreign power and posed a threat to the government itself. The government interests identified in that case are of a different magnitude than the prevention of corruption in campaign financing. Moreover, two years later, this Court indicated that applying the rationale of that case to groups other than the Communist Party would raise grave constitutional issues. Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539, 547 n. 2 (1963); see also Boorda v. Subversive Activities Control Board, 421 F.2d 1142 (1969), *cert. denied*, 397 U.S. 1042 (1970).

[56] *Amici* State Election Commissions state that it is "unclear" whether appellants believe that only candidates not entitled to automatic ballot placement should be exempted from compliance with the disclosure provision, or whether the Mississippi Republican Party should also be exempt (*Amici* Br. 24). The answer is simple. We do not contend that the Mississippi Republican Party should be exempt from disclosure as a third-party, but only one facet of appellants' argument rests on the chilling effect of disclosure to third-party and independent candidates. (See A. Br. 178-84.) Appellants also contend that the FECA's requirements are generally overbroad as to *all* political parties and candidates, particularly with regard to the disclosure thresholds. (See A. Br. 170-77, 184-89.)

Party" and an independent Wallace campaign (IA Br. 178-79) — ignore the possibility that these hypothetical campaigns might in fact be covered even under more narrowly drawn statutes. This disregard for constitutionally more permissible modes of disclosure demonstrates appellees' inability to meet the "less intrusive means" test required when First Amendment rights are at stake. *United States* v. *Robel*, 389 U.S. 258, 265-66 (1967); *Aptheker* v. *Secretary of State*, 378 U.S. 500, 512-14 (1964).

Appellees' discussion of the $10 and $100 triggering thresholds for reporting and disclosure is similarly inadequate. They nowhere attempt to justify Congress' failure to provide a cost-of-living adjustment for those thresholds. As inflation continues, in effect, smaller and smaller contributions are required to be disclosed.[57]

Moreover, appellees ignore the Attorney General's thoughtful suggestions that the fixed disclosure thresholds seriously lack proportionality in terms of varying expenditure levels and potential for influence on officeholders, and that the speculative problems of pooled contributions or a pattern of repeated contributions by a single individual could be dealt with by less sweeping provisions than the flat $100 disclosure and $10 record-keeping requirements (AG Br. I, 86-88). The point is not which

[57] The FEC has ruled that candidates for the presidential nomination of parties who desire to obtain matching-grant funds under I.R.C. Chapter 96 must supply the FEC with photocopies of all checks received from contributors which qualify to be matched with federal funds. FEC Notice 1975-22, 40 Fed. Reg. 33817 (Aug. 11, 1975). This regulation forces candidates for presidential nominations to disclose information about virtually *all* of their contributors to the FEC. Since the photocopies of the checks are presumably open for public inspection under the Freedom of Information Act, virtually *all* contributors' identities will be made known to the general public. No appellee has even attempted to justify this intrusion into associational privacy.

lines should have been drawn, but the fact that more precise lines were not.[58]

Appellees also contest the quantum of evidence adduced by appellants to support their position against the FECA's disclosure requirements (IA Br. 172-73; AG Br. II 47). Appellants have already stated that the record in this case does not reflect the same persistent and concentrated forms of harassment found in cases like *NAACP* v. *Alabama*, 357 U.S. 449 (1958) (A. Br. 173). Nonetheless, the right of associational privacy does not turn on a harassment index, requiring that a certain minimum number of people lose their jobs, receive threats or suffer acts of violence before a statute will be stricken down. It also turns on an assessment of the need for disclosure. Indeed, the court below

[58] *Amici* State Elections Commissions express concern that the ruling appellants seek would eliminate all state disclosure statutes. That is not necessarily true with respect to the disclosure-thresholds argument, since campaign spending for federal elections is generally much higher than spending in comparable state and local campaigns. Nor would a decision requiring more precise line-drawing where minor-party or independent candidates are concerned necessarily invalidate the variety of state disclosure statutes.

The Commissions also suggest that it would be constitutionally unfair and politically difficult to exempt some candidates and committees from disclosure requirements. However, at least two states, Minnesota and Washington, provide a mechanism for doing so. In Minnesota, pursuant to the Minnesota Ethics in Government Act of 1974, the Minnesota Ethics Commission is statutorily empowered to grant exemptions from disclosing the identity of contributors to political associations where disclosure would expose individuals to "economic reprisals, loss of employment or threat of physical coercion." M.S.A. § 10A.20, sub 8. Pursuant to that mechanism, the Minnesota Socialist Workers 1974 Campaign Committee has received such an exemption. See Doe v. Martin, _____ F. Supp. _____ (D.D.C. Oct. 20, 1975, Civil Action No. 75-0083) (involving a minor-party challenge to the disclosure requirements of the 1974 District of Columbia Campaign Finance Reform and Conflict of Interest Act, Pub. L. 93-376, 88 Stat. 446).

recognized this in striking down 2 U.S.C. § 437a, relating to disclosure of contributors to "issue oriented" organizations, and no defendant below appealed that decision. There, although there was substantial evidence of harm which would be suffered by the NYCLU, in the course of the Court of Appeals' extensive discussion of Section 437a (op. at 1549-60), only one footnote (op. at 1551 n. 130) was devoted to describing that harm, and the Court was silent on the harm suffered by Human Events, Inc. Instead the court quite properly focused on the utter lack of any justification for the section.[59]

To demand voluminous proof of the "chilling" effect of the challenged legislation can only result in a self-fulfilling prophecy — minor-party and independent candidacies will be aborted at their inception, there will be no contributors, and hence there will be no "proof" of harassment to such would-be donors. As Chief Judge Bazelon said in dissent, ". . . minor parties would wither and die on the vine awaiting the evidence required [by the majority below]. The spectre of reputations blotted and lives ruined by the release of membership lists is still too vivid to claim ignorance of the danger disclosure poses. 'All others see and understand this. How can we properly shut our minds to it?' " (Op. at 1594-96).[60]

[59] One of the minor-party *amici* notes the irony that, under the ruling below, various issue organizations are now free, and necessarily so, to have a significant impact on the political process without being subject to disclosure requirements, while minor parties which seek to have a similar impact are subject to the full thrust of this statute simply because they run candidates for office as part of their effort to communicate to the public (Socialist Labor Party Br. 10-13).

[60] Moreover, the record-keeping burdens themselves pose added obstacles and difficulties. The disclosure requirements not only burden associational rights, but also strain "the minor party's hard-pressed resources, financial and human, to interpret the provisions, compile the

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B. *Appellees Have Failed To Justify Requiring Disclosure by Individuals Who Make Independent Expenditures.*

Appellants have argued that 2 U.S.C. § 434(e), requiring that all persons who make expenditures under 18 U.S.C. § 608(e) in excess of $100 per calendar year file detailed reports of such expenditures with the FEC, is constitutionally deficient (A. Br. 189-92). Appellees are all but silent on the specific issue, have in no way rebutted this contention, and have failed to distinguish the one case squarely on point, *Talley* v. *California*, 362 U.S. 60 (1960). (See IA Br. 173 n. 202, and AG Br. II 40-41.) Section 434(e) is uniquely chilling since its reporting requirements fall, not on political organizations, but on private citizens, engaged in what they would reasonably regard as normal private conduct, and who will most probably be unaware of the

[60] (continued)
records and obtain legal counsel to comply with the reporting requirements of the law (SLP Br. 12). Even as to major parties, political campaigns typically involved large numbers of citizens — both as volunteer workers and as contributors — who are not professional politicians, and whose enthusiasm for and willingness to assist in electoral activities will be considerably diminished if they are subject to exacting and technical requirements, the infringement of which could lead to criminal prosecution. The FECA's disclosure provisions envelop politics in a maze of just such obscure obligations. As one campaign official recently testified, "[i]t is fundamentally unfair to require a volunteer 'industry' to respond to complex regulatory practice." Testimony of Loren A. Smith, General Counsel, Citizens for Reagan, Before the FEC Hearings on Proposed Disclosure Regulations 1 (Oct. 21, 1975). The expenses of complying with such needless requirements as recording all contributions above $10 and below $100 may well deter potential candidates from running. Senator Bentsen's campaign for the Democratic presidential nomination has already spent at least $75,000, or 10 percent of his total expenditures for the first half of 1975, just to meet the FECA's disclosure requirements. Freed, "This Time Everybody's Got a CREEP," The Washington Monthly (Nov., 1975) 31, 35.

requirement (and therefore will unwittingly violate the law). If they are aware of it, they will likely give up their plans to make independent expenditures rather than incur the resulting burdens and apprehensions.

Indeed, the federal appellees state that *Talley* establishes "that the First Amendment protects anonymous writings against government insistence on disclosure when the purpose is insufficiently important or the means are not carefully tailored to achieve only legitimate purposes" (AG Br. II 41.[61] Appellants agree with this interpretation of *Talley:* so interpreted, it must result in the conclusion that Section 434(e) is unconstitutional. Indeed, just recently in *Commonwealth* v. *Dennis*, 329 N.E. 2d 706, 708-10 (Mass. 1975), holding unconstitutional a Massachusetts statute forbidding the writing or distribution of anonymous circulars or posters designed to aid or defeat any candidate for nomination or election to any public office, the Supreme Judicial Court of Massachusetts declared:

> "It seems clear that any public interest in revealing the source of a communication so that the recipient may assess its content in light of that

[61] Federal appellees also assert that "the Court has been reluctant to apply *Talley* so as to condemn laws which require the sponsors of campaign advertisements to reveal themselves" (AG Br. II 41), citing Golden v. Zwickler, 394 U.S. 103 (1969) and Hill v. Printing Industries of the Gulf Coast, 43 U.S.L.W. 5043 (June 30, 1975). The statement mischaracterizes this Court's actions in the cited cases. In *Golden*, the Court held that plaintiff Zwickler "did not establish the existence . . . of the elements governing the issuance of a declaratory judgment. . .." 394 U.S. at 110. In *Printing Industries*, the lower court's judgment was vacated and the case remanded to consider the effect on the case of new legislation and for dismissal if moot. In neither case did this Court intimate any view of the constitutionality of the statutes in question, nor did it express any doubts about the validity of the *Talley* decision. Indeed, as the Attorney General's *amicus* brief recounts, several other lower courts have presumed that this Court in *Talley* meant exactly what it said about anonymous political speech (AG Br. I 84 n. 55).

> source does not furnish a constitutionally sufficient justification for a prohibition of all anonymous campaign literature." *Id*. at 709.

Section 434(e) is precisely such a prohibition. No such law may be squared with the First Amendment.

IX.

The Commission Is Unconstitutionally Constituted; Its Impermissible Powers, Its Domination by Congress, and the Intolerable Vagueness of the Statute It Administers Make It the Most Inappropriate and Dangerous Means Imaginable for Massive Regulation of the Political Process.

Since the members of the Federal Election Commission are officers of the United States, under Article II, § 2, cl. 2 of the Constitution they must be appointed by the President, subject to Senate confirmation. Since the current scheme provides for appointment, without presidential participation, of four members of the Commission by the two Houses of Congress, the Commission is improperly constituted, and its existence should be held unconstitutional by this Court.

In response, the FEC argues that the principal challenges to the makeup of the Commission are not ripe and that appellants lack standing to make those challenges. The Commission also defends most, but not all, of its statutory powers on the merits.[62] *Amici* Scott and Kennedy do not defend the Commission's powers with regard to civil and criminal enforcement, SK Br. at 109, restricting their support of the Commission to its other powers. The Attorney General and the United States argue that, if the questions with respect to the Commission's powers are ripe, many of those powers unconstitutionally impinge upon the prerogatives of the executive and should be held unconstitutional (AG Br. I 110-20).

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[62] Even the Commission makes no attempt to justify its power to disqualify candidates for federal office, as it does with respect to every other power it admits to having (FEC Br. 42 n. 36). Such a power is clearly unconstitutional. Powell v. McCormack, 395 U.S. 486 (1969), and appellants have a direct and immediate personal stake in the legitimacy of penalties which they and their candidates may face. Baker v. Carr, 369 U.S. 186 (1962).

The questions respecting the Commission are ripe for adjudication, and appellants do possess the requisite personal interest to assert claims of unconstitutionality. Congress has endowed the Commission with powers which neither the Congress nor an "arm of Congress," which the Commission admittedly is, may constitutionally perform. Finally, these powers are integral to Congress' conception of the FEC, and they cannot be "excised" from the FECA without violating the evident and clear intent of Congress. The proper judicial course is to hold the Commission unconstitutional in its inception, permitting the Congress to create a truly independent agency to enforce those restrictions which it may constitutionally impose upon the political process.

A. The Constitutional Issues with Respect to the Legitimacy of the Federal Election Commission Are Ripe and Are Properly Raised by Appellants.

The 1976 elections are one year away. Campaigning for federal offices at all levels is already in progress. James Buckley will likely run for re-election to the United States Senate; Eugene McCarthy is running for the Presidency; William Steiger will either run for re-election to the House of Representatives or seek election to the Senate, and each of the other appellants is a direct and active participant in the federal political process. The Commission's presence astride that process is monumental and its impact thereon overwhelming. Its already-exercised powers, including rulemaking and issuance of advisory opinions, constitute principal means of enforcement of the FECA. They presently inhibit the freedom of action of each of the appellants and their supporters, members, contributors, and candidates.

Appellants are directly subject to FEC regulation; most of them fall into the special class of persons whom the Act

recognizes as most intensely impacted by its provisions by giving them the right to seek advisory opinions from the Commission,[63] 2 U.S.C. § 437f. Congress has, moreover, provided that defined classes of persons, which include appellants, may bring suit challenging the FECA including the provisions relating to the Commission. 2 U.S.C. § 437h(a).[64] Appellants plainly have "such a personal stake in the outcome" of this lawsuit as to grant them Article III standing. *Baker* v. *Carr*, 369 U.S. 186, 204 (1962). The Commission presently is operating with its full powers and is thereby impinging upon the rights of appellants, who are bound by its actions. *Cf. Regional Rail Reorganization Act Cases*, 419 U.S. 102, 143 (1974). To equate, as appellees do, appellants' interest here to that of any citizen or taxpayer is ludicrous.

Appellees contend that, even if the Commission is improperly constituted, appellants are not seriously affected because it makes no difference to them who enforces the FECA (FEC Br. 8, 10; see also SK Br. 109, AG Br. I 107). First, we note that the Court of Appeals held that appellants had standing and proceeded to decide on their merits the certified questions concerning the method of ap-

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[63] The Scott-Kennedy brief, SK Br. 21, is wholly incorrect in stating that the Commission is required to give "anyone" an advisory opinion.

[64] See Warth v. Selden, 43 U.S.L.W. 4906 (June 25, 1975). The passage from the Conference Report which appellees attempt to construe as excepting Commission-related issues from this provision (FEC Br. 11) cannot possibly bear that construction. The Report's phrase "related to the activities regulated by the Act" is patently a shorthand description of the criminal-code provisions enumerated in 2 U.S.C. § 437h(a) and does not limit the unqualified right of action with respect to "any provision of this Act."

As to the Commission-related issues, Section 437h(a) is effectively equivalent to the statutes in many jurisdictions which authorize specific classes of private persons, defined with reference to their interest in the question, to bring *quo warranto* proceedings. 74 C.J.S.2d 222-23.

pointment of the Commission and the validity of those of its powers which the court believed ripe (op. at 1572, 1582, 1585).

Appellees' argument is ironic in view of their general defense of the challenged legislation as a "reform" measure designed to restore public confidence. It is hardly consistent with such a goal for the entire political process to be dominated by an agency whose constitutionality is subject to the gravest doubts if there exist no prompt and effective means for resolving those doubts. Even the Attorney General, while agreeing that the constitutional questions are "of the first magnitude," AG Br. I 105, asks this Court to refrain from deciding them. Fortunately, the argument is without merit.

The separation of powers is not designed for the sole benefit of federal officeholders.[65] It is of vast importance to appellants, who are immediately affected by the operation and enforcement of the FECA, that the persons entrusted with the administration of these statutes can constitutionally be so empowered. Where, moreover, the interests appellants represent are for the most part political "outs" — challengers to incumbents, third parties, independent candidates and the like —, our contention here that the Commission is so constituted that it will disfavor such interests, and is impermissibly under the thumb of incumbent Congressmen, is one that plainly affects appellants' most vital interests.

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[65] The selective-service cases cited at FEC Br. 10 n. 6, are wholly inapposite; they turned on special features of selective-service law, *i.e.*, preinduction v. postinduction remedies and the interpretation of a regulation that draft board members shall "if at all practicable, be residents of the area in which their local board has jurisdiction." *E.g.*, United States v. Chaudron, 425 F.2d 605, 611 (8th Cir. 1970). None of these cases was dismissed for lack of standing.

This Court has long been committed to "maintaining the constitutional plan of separation of powers." *Glidden Co.* v. *Zdanok*, 370 U.S. 530, 536 (1962) (opinion of Harlan, J.). The Court has vigorously exercised its obligation to protect citizens from a Congress bent on enforcing its will as well as enacting it. *Watkins* v. *United States*, 354 U.S. 178 (1957); *Quinn* v. *United States*, 349 U.S. 155 (1955); *Marshall* v. *Gordon*, 243 U.S. 521 (1917); *Kilbourn* v. *Thompson*, 103 U.S. 168 (1881). In cases impacting the separation of powers, standing has not been limited to the official participation of the branch of government arguably aggrieved, but has been extended to those having a direct and concrete interest in observance of the constitutional principle in question. *Coleman* v. *Miller*, 307 U.S. 433 (1939); *Mitchell* v. *Laird*, 488 F.2d 611 (D.C. Cir. 1973); *Kennedy* v. *Sampson*, 511 F.2d 430 (D.C. Cir. 1974). The appellants plainly meet that test here.

The substantive context in which the FEC operates militates strongly in favor of this Court's jurisdiction over the constitutional challenge to the Commission's existence and powers. The Commission enforces statutes which attempt to regulate the most fundamental of our liberties: the right to speak. Even assuming that some of the substantive provisions appellants challenge are constitutional, it is essential that the enforcement responsibilities under the FECA be in the proper constitutional hands. *Cf. Freedman* v. *Maryland*, 380 U.S. 51 (1965); *Lamont* v. *Postmaster General*, 381 U.S. 301 (1965). As this Court held in *Miami Herald Publishing Co.* v. *Tornillo*, 418 U.S. 241, 247 n. 6 (1974), "[w]hichever way we were to decide on the merits, it would be intolerable to leave unanswered, under these circumstances" an important issue which goes to the very core of appellants' freedoms under the First Amendment and the doctrine of separation of powers. See also *Mills* v. *Alabama*, 384 U.S. 214, 221-22 (1966) (Douglas, J., concurring); *Organization for a Better Austin* v. *Keefe*, 402

U.S. 415, 418 n. (1971). Under well-established principles of constitutional adjudication, this Court possesses jurisdiction over appellants' challenge to the FEC.

B. *Congress May Not Usurp the Powers of Administering and Enforcing Laws Regulating the Federal Electoral Process.*

The Commission asserts that (1) Congress has special responsibility over the federal electoral process; (2) this special responsibility implies that Congress may establish and enforce, without Executive participation, regulations controlling the conduct of Members and non-Members of Congress as that conduct may affect the federal electoral process; (3) this right of control may be devolved by Congress on its delegates; (4) the FEC is an arm of Congress; therefore, (5) the FEC can properly administer and enforce the FECA and Subtitle H.

There is no real dispute that the FEC is in fact, by virtue particularly of the appointment of four of its members solely by Congress and the retention by Congress of the power to veto its actions, an arm of Congress, an integral part of the legislative branch of the government.[66] All parties appear to agree that, if it is not, or if the nature of its powers means it cannot be, the manner of appointing it is patently unconstitutional. Constitution, Art. II, § 2, cl. 2; see *Myers* v. *United States*, 272 U.S. 52 (1926). Departing from that common ground, however, the argument for the Commission's preservation breaks down irretrievably.

[66] Apparently, only *amici* Scott and Kennedy view the Commission otherwise (SK Br. 119). The Commission believes itself to be an arm of Congress, FEC Br. 36, as do the Attorney General, the United States, the Court of Appeals, and appellants. See AG Br. I 110. The Congress appoints a majority of the Commissioners and uses the legislative veto as a means to "control [ ] its own instrumentality." *Id.* at 112.

Crucial to the Commission's position is the argument that Congress has uniquely broad administrative responsibilities with regard to the federal electoral process. In fact, Congress' authority in the area has been narrowly construed by this Court and can in no way support the massive intrusion upon Executive prerogatives attempted through the establishment of the FEC.

Article I, § 4, cl. 1 provides that Congress may "by Law" make or alter regulations pertaining to the "Times, Places and Manner of holding elections for Senators and Representatives." This involves merely the power to legislate, and in no sense authorizes Congress to act outside of its traditional legislative role, subject to the President's veto power. See *Oregon* v. *Mitchell*, 400 U.S. 112, 117 (1970) (opinion of Justice Black).[67] The Commission also relies upon Art. I, § 5, cls. 1 and 2. The first clause provides in relevant part: "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members . . . ." The second clause provides in relevant part: "Each House may . . . punish its Members for disorderly behavior, and, with the Concurrence of two-thirds, expel a Member."

The jurisdiction of each House of Congress to "Judge" the elections, returns, and qualifications of its Members attaches only when an individual, with appropriate credentials, presents "himself to the [House], claiming all the

[67] The Commission makes passing reference, without case citation, to the Twelfth Amendment as constitutional authority for congressional oversight of presidential elections (FEC Br. 21-22 & n. 24). At most, the Twelfth Amendment grants to the Senate and House the right to inquire into the bona fides of electoral-college votes transmitted to them for counting. *Cf.* Barry v. United States *ex rel.* Cuninngham, 279 U.S. 597, 614 (1929). That, of course, was all that Congress did with respect to the disputed 1876 presidential contest between Hayes and Tilden. Congress may *regulate* presidential elections, as opposed to judging the "rightfulness of the claim" made by electors in specific presidential electoral-college contests, *id.*, only "by Law."

rights of membership." *Barry* v. *United States ex rel. Cunningham*, 279 U.S. 597, 614 (1929). The House and Senate are accorded no power by this provision to sit in judgment on elections *before* they happen.

That the power granted in the first clause of Art. I, § 5, is to be strictly limited was made plain in *Powell* v. *McCormack*, 395 U.S. 486 (1969). The Court there held that the House, in judging the qualifications of petitioner Powell under Art. I, § 5, was "limited to the standing qualifications prescribed in the Constitution." *Id.* at 550. The Court was particularly concerned with protecting the Constitution's intention "to require a two-thirds vote for expulsion," *id.* at 548, and concluded "that the Constitution does not vest in the Congress a discretionary power to deny membership by a majority vote." *Ibid.*

Powell v. *McCormack* involved an attempt to exclude, not expel, a Member. The power to expel is derived from the second clause of Art. I, § 5, which speaks of the power of Congress to punish and, by a two-thirds vote, expel "a Member." The grant of power is specific and quite limited. The purpose of the grant of power is to protect Congress' "interest in preserving its institutional integrity." *Id.* at 548. It is employed "in extreme cases," *id.*, and can be invoked only by a vote of two thirds of the House in question. Whether there are additional substantive or procedural limitations on this power was a question left open by the Court in *Powell* v. *McCormack*, *supra*, 395 U.S. at 507 n. 27, n. 30; but there is no question that the power may only be exercised with respect to Members, that it requires a two-thirds vote, and that it may not be exercised with respect to other actors in the political arena.

Far from endowing Congress with a broad mandate to regulate the electoral process without participation of the Executive, these sections of the Constitution do no more

than carve out certain narrow areas in which Congress may regulate itself and police the conduct of its own Members. And these special areas where Congress may act have been carefully circumscribed by this Court. To attempt an extrapolation from such narrow areas to the extraordinarily broad powers Congress would assume for its delegates through the FEC has been charitably described by the Attorney General and the United States as "a simple *non-sequitur*" (AG Br. I 119). The bald statement of such a position by the Commission at p. 26 of its brief merely demonstrates the flight of legal fancy the Commission indulges in to protect its existence.[68]

The Commission relies on what it argues is a long history of Congressional entrustment of powers to its delegates in policing the electoral process (FEC Br. 29-30). Appellants do not contend that Congress acted illegally in the past in establishing certain of its officers[69] as receiving agents for campaign-financing reports, and if the Commission were merely to act as a depository for such information it might not impinge unduly upon Executive functions.[70]

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[68] Even if Congress had the powers the Commission claims for it in overseeing all aspects of federal elections, it is clear that such powers could not be delegated by Congress to any other body. Exclusion or expulsion of a Member is an action which only Congress can take. See, *e.g.*, Powell v. McCormack, *supra*.

[69] Of course, Congress can appoint officers of its own to assist it in the performance of its tasks. While they are officers of the United States, Art. II, § 2, cl. 2 does not require that they be presidentially appointed, for the clause expressly exempts from that requirement officers whose appointment is "otherwise provided for." Appointment of congressional officers is provided for by Art. I, § 2, cl. 5; § 3, cl. 5.

[70] But see pp. 104-06, *infra*. The enforcement powers were the functions considered by Congress most crucial to the concept of a separate Commission to participate in the regulation of the political process under the FECA. That the Commission may have other powers which standing alone might not violate the separation of powers does not save the Commission from invalidation. See pp. 108-11, *infra*.

The Commission makes numerous references to the role of the Comptroller General in the administration of prior campaign-finance legislation. See, *e.g.*, FEC Br. 31, 32, 33, 34, 40. Whatever role the Comptroller General has had in past regulation of politics (never considered by the courts) is totally unhelpful to the Commission. As Judge MacKinnon points out in his dissent below, op. at 1615, and as appellants pointed out in their opening brief, A. Br. 205, the Comptroller General is appointed by the President in conformity with Article II, § 2, cl. 2 — a fact nowhere mentioned by the Commission. The Comptroller General and the General Accounting Office are in fact and substance an independent agency, appointed for a fixed term and acting "without direction from any other officer," 31 U.S.C. § 44, not a subservient "arm of Congress" like the FEC.[71]

Finding a paucity of evidence in the area of regulation of politics to support its contention that Congress may appoint officers of the United States who perform executive functions, the Commission turns to a variety of historical "precedents" which include the American Printing House for the Blind and the National Asylum (FEC Br. at 18). It is difficult to imagine what relevance these incongruously minor situations (never considered in the courts) have to do with the massive and unprecedented invasion of executive prerogative attempted in the formation of the FEC.

[71] Even so, it is as true today as it was in 1939 that "the constitutionality of the Comptroller General's position has been much debated, to no conclusive result . . . . A decisive answer waits upon the pronouncement of an authoritative tribunal. None such has spoken . . ." Mansfield, The Comptroller General 74 (1939).

United States v. Stewart, 234 F. Supp. 94, 99 (D.D.C.), *aff'd*, 339 F.2d 753, (D.C. Cir. 1964), expressly held that with respect to his administrative functions the Comptroller General is a part of the executive branch, and that he is a legislative officer *only* with respect to the conduct of investigations.

The Commission also relies on congressional designations of named persons to particular military ranks. In *Wood* v. *United States*, 107 U.S. 414, 417 (1882), this Court held that a military officer can be appointed only by the President pursuant to Article II, § 2, cl. 2, but that once an officer had been appointed by that means, Congress could change his rank or pay, since "this is not to appoint him to a new or different office." The practice thus offers the Commission no solace here.

The two principal alleged precedents on which the Commission relies are the presidential succession acts and a statute authorizing the reduction of the national debt (FEC Br. 17-19). Reliance on the succession acts is astonishing in view of Congress' express constitutional power (Art. II, § 1, cl. 6, now supplemented by the Twenty-Fifth Amendment) to provide by law for the presidential succession. Obviously appointment to that office is "otherwise provided for," Art. II, § 2, cl. 2, with a vengeance, and thus is not subject to the presidential-appointment requirement of that clause.

The 1792 national-debt statute, 1 Stat. 281, provided, in sections 6 and 7, that the President of the Senate, the Chief Justice, the Secretary of State, the Secretary of the Treasury, and the Attorney General should be commissioners any three of whom, "with the approbation of the President of the United States," were authorized to purchase and redeem the debt of the United States. 1 Stat. 282-83. The power to reduce the debt was, in effect, given to three Executive appointees, and the Commission could not act without the "approbation" of the President. When the statute is read in the full context the Commission did not choose to provide, it offers no support whatever for the right of the Commission to exist under the constitutional scheme of separation of powers.[72]

[72] The Chief Justice who was designated as a commissioner was John Jay, who while Chief Justice also negotiated the treaty which bears his

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C. *The Commission's Principal Powers Are Constitutionally Incapable of Being Exercised by an Arm of Congress.*

The FECA grants to the Commission powers which cannot be performed by Congress directly or through its agents, but only by officers of the United States appointed pursuant to Article II, § 2, cl. 2.

Rulemaking. Integral to the enforcement of the laws is the power to make rules and regulations in interpreting the meaning of the laws. Interpretation of laws through rulemaking is not a legislative function. *Hampton & Co.* v. *United States*, 276 U.S. 394, 406-11 (1928). Substantive rulemaking is likewise primarily a matter of administration, *id.*, but if it is to be exercised by Congress or its agents such rules, amounting to new legislation, must be subject to presidential veto. The Commission — subject to *congressional* veto — has both kinds of rulemaking power, and both are bad.

The *Hampton* case involved the so-called "flexible tariff" provision of the Tariff Act of 1922 which authorized the President, after investigation, to alter tariffs levied by the United States to equalize tariff penalties between it and competing foreign countries. The Court held that Congress had not unlawfully delegated any of its legislative power to the President. The Court first noted that "it is a breach to the National fundamental law if Congress gives up its legislative power and transfers it to the President, or to the Judicial branch, or if by law it attempts to invest itself or its members with either executive power or judicial power." *Id.* at 406. The Court, however, stated that one branch of

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[72] (Continued)
name with Great Britain. Presumably not even the Commission would argue that it would today be considered proper, on the basis of any such precedent, for the Chief Justice to negotiate a treaty with a foreign nation.

government may invoke the action of the other two branches "in so far as the action invoked shall not be an assumption of the constitutional field of action of another branch." *Id.* In that context the Court stated that Congress has often found it necessary to authorize by statute the Executive officers "to secure the exact effect intended by its acts of legislation, by vesting discretion in such officers to *make public regulations interpreting a statute and directing the details of its execution*, even to the extent of providing for penalizing a breach of such regulations." *Id.* (emphasis added.) See also *id.* at 409.

It is plain that the powers to "formulate general policy" under the FECA and the parallel sections of the criminal code, 2 U.S.C. § 437d(a)(9), and to prescribe rules and regulations, §§ 437d(a)(8), 438(a)(10), are executive, not legislative, in character, and cannot be appropriated by the Legislature for itself or for a legislative agency. The Attorney General agrees (AG Br. I 116-19).

While it is settled that certain types of rulemaking powers may be vested in an independent agency whose members are appointed by the President, see *Humphrey's Executor* v. *United States*, 295 U.S. 602 (1935), it does not follow that Congress can reserve such powers to itself through the vehicle of an agency totally subject to its control. If the Commission can validly make rules, those rules have the force of law and are binding on the population. Since Congress has reserved to itself (and is vigorously exercising) the power to veto such rules, 2 U.S.C. § 438(c), the rules become effective essentially as actions by Congress itself. As such — that is, as legislative acts, which is the basis on which the Commission tries to defend them (FEC Br. 54) — they are fatally defective because the constitutionally required participation of the President in the legislative process (Art. I, § 7, cl. 2) has been excluded. No legislative act by Congress can acquire the force of law unless the

President has had the opportunity to veto it. Here again, the Attorney General agrees (AG Br. I 117).

Especially troublesome are the Commission's rulemaking power with respect to the criminal code and its mandate (2 U.S.C. § 437d(a)(9)) to "formulate general policy" with respect to the enforcement of criminal statutes; such powers trench too sharply on the constitutional responsibility of the Executive faithfully to execute the laws of the land (Art II, § 3). The Commission is unwilling even to attempt a defense of the FECA's vesting of such powers in an "arm of Congress." Indeed, and astonishingly considering its own actions to the contrary, the Commission baldly tells this Court that it has not been given authority to promulgate rules governing the Title 18 criminal provisions imposing expenditure and contribution limitations (FEC Br. 49, 55).

Special counsel have apparently not yet heard of the regulation promulgated by the Commission, and rejected by the Senate, which expressly provided that certain amounts contributed to and expended from so-called "office accounts" of Members of Congress were to be considered contributions or expenditures "*subject to the limitations of 18 U.S.C. §§ 608, 610, 611, 613, 614 and 615.*" (emphasis added), which of course are the criminal provisions in question. Sen. Rep. No. 94-409, 94th Cong. 1st Sess. (October 6, 1975) at 5-7, 9. [73]

[73] The Commission ignores the fact that the disclosure and reporting provisions, as to which it does assert rulemaking authority, are themselves criminal provisions, with violations punishable by up to one year in prison. 2 U.S.C. § 441(a).

Curiously, the Commission never published these rules in the Federal Register. A notice of proposed rulemaking, containing the same language quoted above, appears at 40 Fed. Reg. 32951, § 113.2 (1975).

Similar failures of communication between the Commission and its special counsel have not been unusual in the course of this litigation. (See A. Br. 203 & n. 7.) Such inconsistencies indicate that any disclaimers by the Commission with respect to what powers it posseses should be treated with the utmost caution. The Commission should be judged on the basis of the powers it has been given by the FECA, or at least on the basis of the powers it is presently exercising, and not on the basis of those powers its counsel feel willing to defend before this Court.[74]

Nor is the rule mentioned above an isolated example. The "interim guidelines" published by the Commission on August 21, 1975, to govern the special New Hampshire Senate election, 40 *Fed. Reg.* 40668 (1975), consist of detailed instructions to the candidates and others specifying precisely what conduct is lawful and what would be criminal, with explicit references to the relevant sections of the criminal code. Many of these directions are not even interpretative, but substantive and administrative; for example:

> "For purposes of calculating the limitations on contributions and expenditures under 18 U.S.C. 608, the Commission has set July 30, 1975, . . . as a cutoff date." *Id.*, § II.

Similar "guidelines" for a special Tennessee House election were promulgated on September 16, 1975 (40 *Fed. Reg.* 43660 (1975)). Obviously, any candidate or other affected person will ignore such rules and guidelines at his extreme

[74] Special counsel's disclaimer, while nowhere explained, is presumably based on the same rationale as they articulate with respect to the civil-enforcement power. If so, it is very likely wrong, and surely academic, for the reasons discussed at pp. 100-01, and p. 103 n. 77, *infra*. In any event, the Commission is acting in complete disregard of the disclaimer.

peril. Thus, its representations to this Court notwithstanding, the Commission has already plunged fully into the implementation and administration of criminal statutes, including those limiting campaign expenditures and contributions. This it may not do.

The Commission's latest proposed rules, promulgated on September 29, 40 *Fed. Reg.* 44698 (1975), are comprehensive regulations governing a host of matters relating to the application and enforcement of the contribution and expenditure limits. These are entitled "Disclosure Regulations"; they purport to construe the disclosure provisions of the FECA, but it is observed:

> "Although *primarily* implementing title III of the cited Act [the disclosure provisions], these regulations should be read together with sections 591, 608, 610, 611, 613, 614, 615, 616, and 617 of the Federal Election Campaign Act Amendments of 1974 . . ." [the limits provisions].

This change in the Commission's verbiage, even if permanent[75] is devoid of substance. Since the definitions in the disclosure provisions of the law and in the limits sections are identical, even rules promulgated by the Commission purportedly limited to disclosure will be fully effective as a practical matter in the limits area as well, as the language quoted above suggests and as the Commission recognizes (FEC Br. 55-56). Certainly a criminal defendant who had ignored them would be deprived of any defense of

[75] Three days prior to issuing the "Disclosure Regulations," the Commission promulgated an "Advance Notice of Proposed Rulemaking," 40 Fed. Reg. 45297 (1975), dealing with many critical questions of allocations of contributions and expenditures among candidates. The Notice declares that "[t]he FEC is responsible for the administration of, for obtaining compliance with, and for formulating policy with respect to . . . [the FECA] and sections 608, 610, 611, 613, 614, 615, 616, and 617 of Title 18, United States Code."

good faith or lack of *scienter*. Even though not binding on the Attorney General and the courts, such rules, and Commission investigations pursuant to them, will have an overwhelming *in terrorem* effect on all participants in the political process.[76] Finally, a congressional agency may not constitutionally issue substantive rules implementing even disclosure requirements. Such regulations make new law; they require the concurrence of the Executive or passage over his veto. The Commission has not been exceeding its statutory authority in issuing substantive as well as interpretative rules; 2 U.S.C. § 437d(8) plainly purports to confer that power, authorizing "such rules . . . as are necessary to carry out the provisions of this Act"; see also Section 438(d).

Even purely interpretative rules nominally limited to the disclosure provisions are beyond the power of an "arm of Congress" for the reasons stated above and at pp. 104-06, *infra*.

The Commission has also begun to issue rules implementing the federal-subsidy provisions, *e.g.*, 40 *Fed. Reg.* 40671, 47688, 41933 (1975). These are largely substantive rules governing administration, rather than interpretative rules. Merely as one example, candidates seeking federal funds are required to keep and submit photocopies of checks for all contributions, *id.* at 47689, § 131.2 (c)(2), an obligation nowhere suggested in the statute. I.R.C. § 9039(b), the statutory authority for Commission rulemaking under Subtitle H, plainly permits substantive as well as interpretative rules. But administration of the federal-subsidy provisions is no more a permissible activity for an "arm of Congress" than administration of the tax laws or the nation's foreign affairs. It is flatly unconstitutional.

[76] For comments of knowledgeable members of Congress to this effect, see 121 Cong. Rec. H 10192 (remarks of Representative Hays) and H 10194 (remarks of Representative Burton) (daily ed. Oct. 22, 1975); 121 Cong. Rec. S 17881 (remarks of Senator Clark) (daily ed. Oct. 8, 1975).

Advisory Opinions. The Commission has already issued many advisory opinions; it is preparing to issue hundreds more. They span every conceivable aspect of the challenged legislation and, therefore, of the American political process. The Commission is explicitly asserting, and vigorously exercising in these opinions, the right to construe the limits provisions; no pretense is made that only the disclosure requirements are in question. And the most cursory sampling of these opinions and of requests for them confirms the extraordinary vagueness of the legislation, the host of questions they leave unanswered, and the virtually unfettered discretion of the Commission in filling the gaps. *E.g.*, 40 *Fed. Reg.* 29792, 31316, 34084, 36242, 36746, 44040, 45292 (1975) (opinions); 40 *Fed. Reg.* 26660, 28044, 28944, 30258, 31878, 36530, 49066 (1975) (requests).

These advisory opinions effectively make new law. No prudent candidate or other person will dare to ignore them; any candidate, especially, is acutely aware of the crippling impact even a threat of enforcement could have on his candidacy, wholly without regard to what precise legal effect a favorable opinion would have on *scienter* when he stands before a judge or jury. As a practical matter, at least until its initial rulemaking effort is completed, advisory opinions are the Commission's principal enforcement mechanism and chief *in terrorem* power.

It is no part of the business of Congress or of ancillary congressional agencies to issue such opinions in any area, much less in an area so deeply implicating First Amendment freedoms. The Commission's power is unconstitutional.

Civil Enforcement. The Commission has been granted "primary jurisdiction with respect to the civil enforcement of" the entire statute, including the criminal-code

provisions imposing limitations on contributions and expenditures. 2 U.S.C. § 437c(b). It is to solicit complaints, investigate possible violations, conduct hearings, and attempt to secure compliance through "informal methods"; those failing, it may institute civil actions in the courts for relief. 2 U.S.C. § 437 g.

It is the President's constitutional responsibility to "take care that the Laws be faithfully executed" (Art. II., § 3).

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[77] The Commission has issued an "interim guideline" laying down procedures for receiving and investigating complaints and holding hearings thereon; the guideline expressly embraces the expenditure and contribution limitations. 40 Fed. Reg. 28578 (1975).

[78] This provision, which refers expressly to the criminal-code provisions, is ignored by the Commission in its attempted demonstration that its enforcement powers embrace only the disclosure provisions (FEC Br. 49, 60-63). Subsections (a)(1), (2), (3) and (4) of Section 437g, providing for Commission complaints, notification of violations, investigations and hearings, likewise are expressly made applicable to the statutory limits on contributions and expenditures. Even Section 437 g(a)(5) (civil enforcement actions), on which the Commission does focus, may also embrace those provisions. The footnote to Section 434 to which the Commission refers (FEC Br. 61) specifies that the term "this Act," as used in Section 437 and elsewhere, means "the Federal Election Campaign Act Amendments of 1971 . . . as amended by P.L. 93-443, the Federal Election Campaign Act Amendments of 1974," P.L. 93-443, entitled "Federal Campaign Act Amendments of 1974," *included*, as Title I, the criminal-code expenditure and contribution limitations. 88 Stat. 1263 (1974). In any event, the distinction the Commission tries to make between two different kinds of enforcement power is wholly academic as a practical matter. If the Commission brings a proceeding, for example, to establish that a candidate has not reported what it considers to be a contribution or an expenditure, its success in that proceeding will establish that the unreported acts (if they place the candidate over any applicable limit) violate the limits, since the definitions in the disclosure and the limitations sections are the same.

That power is exclusive and applies to both the criminal and civil enforcement of the laws. *United States* v. *Nixon*, 418 U.S. 683, 693 (1974); *Confiscation Cases*, 74 U.S. (7 Wall.) 454, 457-59 (1869). Congress has acted unconstitutionally in attempting to usurp such power for its delegates.[79] While again there are precedents for conferring some (by no means all) of these powers on independent agencies, they may not be arrogated by Congress to its own creature.

The Commission chooses to deal with the special problem of 2 U.S.C. § 437g(a)(7) in a footnote to its brief (FEC Br. 62 n. 52). That subsection provides that "upon request by the Commission the Attorney General on behalf of the United States shall institute a civil action for relief" against violations of the statute, including the contribution and expenditure limitations of Title 18, U.S.C. The Commission contends, along with the Court of Appeals, that "shall" was not intended to be "language of command." There is nothing in the legislative history to support such a view. As the Chief Justice has recently stated: "It is well settled that 'shall' means 'must' . . . ." *Hicks* v. *Miranda*, 43 U.S.L.W. 4857, 4863 (June 24, 1975) (concurring opinion). This section removes from the Attorney General the prosecutorial discretion which lies at the very heart of that officer's responsibilities to the President and to the Constitution.

The Commission's own express authority to bring civil-enforcement proceedings, 2 U.S.C. § 437g(5), is equally indefensible. Even if it is limited to the disclosure provisions, those provisions go far beyond mere "information-gathering" for legislative-oversight purposes (FEC Br. 61, 63).[80] It is perfectly clear that the primary purposes and effects of the disclosure provisions are not legislative oversight, but (1) to require disclosure *to the public* as a dissuasive to corruption and an aid to voters in casting their ballots, and (2) to enable the FEC to collect the data and conduct the investigations on the basis of which the substantive limitations on contributions and expenditures are to be enforced. These are the very grounds on which appellees defend the disclosure provisions as constitutional (IA Br. 163-69; AG Br. II 29-31, 39; SK Br. 74-76);[81] legislative oversight is never mentioned. It follows that even the "information-gathering" function itself, in the sense of acting as a depository for reports, probably ought not to be entrusted to an arm of Congress but rather to an independent agency. Certainly the enforcement of such disclosure provisions by rules, advisory opinions, investigations, hearings, conciliation proceedings and civil actions is no constitutional part of Congress' duties.

"[T]he [congressional] power to investigate must not be confused with any of the powers of law enforcement; those powers are assigned under our Constitution to the Executive and the Judiciary." *Quinn* v. *United States*, 349 U.S. 155, 161 (1955). "Nor is the Congress a law enforcement or trial agency. These are functions of the executive and judicial departments of the government. No inquiry is an end in itself; it must be related to, and in fur-

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[79] No argument can be made that the President, by signing the legislation establishing the Commission, can effectively consent to the transfer of Executive functions to delegates of the Congress. *Cf.* National Cable Television Ass'n v. United States, 415 U.S. 336 (1974).

[80] The other rationale suggested by the Commission, that the information is gathered to permit Congress to exercise a "responsibility of judging the qualifications of its own members in terms of their compliance with federal election finance laws" (FEC Br. 63), is invalid and in flat conflict with Powell v. McCormack, pp. 91-93, *supra*. As the Court there held, Congress may exclude a Member only for failure to meet the constitutional qualifications for membership.

[81] The legislative history is to the same effect. See, *e.g.*, S. Rep. No. 92-229, p. 127 (92d Cong. 1st Sess. 1971); H.R. Rep. No. 92-84, p. 4 (92d Cong. 1st Sess. 1971).

therance of, a legitimate task of Congress." *Watkins* v. *United States*, 354 U.S. 178, 187 (1957). Just as this Court held that the congressional investigation involved in *Watkins* was not for a legitimate legislative purpose, but rather for purposes of public exposure and law enforcement, so the whole panoply of enforcement powers vested in the Commission as an "arm of Congress" must be stricken down for identical reasons.

D. An Independent Agency, Not an "Arm of Congress," Would Be Required for the Exercise of Such Control as Congress May Constitutionally Enact Over the Political Process.

When all else fails, the Commission, along with *amici* Scott and Kennedy, fall back on a strictly political argument. They argue that Congress could rationally conclude that allowing the President to appoint the Commissioners of the FEC would lead to undue influence by the President over the Commission and further undermine confidence in our governmental system. See FEC Br. 42; SK Br. 120-22.

In all the talk by the Commission and *amici* Scott and Kennedy about the dangers of allowing the President to appoint, there is no mention of the Senate power of confirmation. Art. II, § 2, cl. 2. The Senate can demand that those the President appoints to the FEC be individuals of high competence and integrity. And fixed terms of office free the Commissioners, once appointed, from undue influence by either the President or the Congress. [82]

The constitutional scheme of appointment and confirmation can work. All that it requires is a Senate of sufficient conscientiousness. For example, the Senate inquired into then-Attorney General designate William B. Saxbe's commitment to the independence and freedom of action of then-Special Prosecutor Leon Jaworski. *United States* v. *Nixon*, *supra*, 418 U.S. at 695 n. 9. And it is settled that, through the independent-agency device, Congress may specify fixed terms for agency members and thus render them independent of the President's power of removal. *Humphrey's Executor* v. *United States*, *supra*; *Weiner* v. *United States*, 357 U.S. 349 (1959).

[82] Congress can, of course, also specify qualifications for persons to be appointed. The present law, 2 U.S.C. § 437c(a) (3), imposes some such qualifications; they could be greatly strengthened.

Appellees imply that the constitutional scheme of appointment should be disregarded in this case because of "recent events," FEC Br. 42, referring no doubt to the events of 1974. Those events, however, did not demonstrate the inability of the constitutional scheme of government to function. Quite to the contrary, adherence to the Constitution by the vigorous efforts of the Legislature, the Executive (through the Office of Special Prosecutor and the Department of Justice) and the Judiciary resolved the crisis and brought a measure of stability and renewed respect for the institutions of government to the people. The Constitution has worked and will work. Congress may not amend it by fiat through the creation of the FEC.

The notion of *amici* Scott and Kennedy that the FEC is independent is, of course, fanciful. The Commission has sent two sets of regulations to the Congress. Sen. Rep. No. 94-409, 94th Cong., 1st Sess. (Oct. 6, 1975); House Doc. No. 94-231, 94th Cong., 1st Sess. (Aug. 1, 1975). The Congress, in the exercise of its power to veto any rules or regulations issued by the Commission, 2 U.S.C. § 438(c), vetoed both sets of regulations. The Senate, on the advice of its Committee on Rules and Administration, Sen. Rep. No. 94-409, *supra*, vetoed the regulations which would have included some "office account" spending by Members of Congress under the contribution and expenditure limitations of Title 18. 121 *Cong. Rec.* S. 17888 (daily ed. Oct. 8.

1975).[83] Likewise, the House of Representatives, on the recommendation of its Committee on House Administration, House Rep. No. 94-552, 94th Cong., 1st Sess. (Oct. 9, 1975), vetoed a set of regulations which would have required political candidates, including Members of Congress, to file their campaign financial reports with the FEC rather than with the Secretary of the Senate and the Clerk of the House. 121 *Cong. Rec.* H 10197 (daily ed. Oct. 22, 1975). See Weaver, "Election Agency Set Back In House," New York Times, October 23, 1975, at 1, col. 4. Representative Dickinson expressed the general view: the regulation should be rejected because "[i]t is very important that this House maintain control over the election procedures of its Members, as well as other Federal officials." 121 *Cong. Rec.* H 10191-92. The vote in the House was 257 to 148 to veto the regulations.

It is clear that the Commission is independent in no meaningful sense of the word. The Commission is the instrument of Congress.

E. *The Appropriate Remedy for the Unconstitutionality of the Commission Is To End Its Existence.*

Since the Commission is unconstitutionally constituted, the question remains as to the appropriate remedy. The Commission argues that, should some of its powers be found impermissible for an arm of Congress, the Court

[83] Appellant James Buckley, a Member of the Senate, voted against the regulations. He will continue to vote against any and all regulations promulgated by the Commission, because in his view the Commission is an unconstitutional agency and is enforcing legislation which strikes at basic First Amendment freedoms. While the vote as recorded was close, only one Senator spoke in favor of the regulation and it is plain that whatever votes were needed to defeat it would have been forthcoming. See Weaver, "Senate Rejects 'Slush Fund' Curb," New York Times, Oct. 9, 1975, at 15 col. 1.

should merely excise those powers and allow the Commission to continue otherwise to function (FEC Br. 51-52 n. 43).

The Commission correctly contends that the issue of severability is one of congressional intent, but its position that such intent is conclusively established by 2 U.S.C. § 454, a severability provision, is too simple.[84] *Ibid.* The existence of the severability provision is of little help in divining the intent of Congress with respect to the powers and existence of the FEC. The presence or absence of a severability clause generally has little if any impact on the ultimate determination of severability. *United States* v. *Jackson*, 390 U.S. 570, 585 n. 27; *Dorchy* v. *Kansas*, 264 U.S. 286, 290 (1924).

The question of severability is one of "statutory construction and of legislative intent." *Carter* v. *Carter Coal Co.*, 298 U.S. 238, 313 (1936). It is evident from the legislative history of the FECA Amendments that the "basic purpose" of Congress, *United States* v. *Jackson*, *supra*, 390 U.S. at 591, in establishing the FEC was to create an agency with strong enforcement powers. Congress had also intended that the Commission be independent, but, as the Commission itself admits (FEC Br. 36), was unsuccessful in that regard.

Senator Clark, a strong supporter of the FEC, see Sen. Rep. No. 94-409, 94th Cong., 1st Sess. (Oct. 6, 1975) at 23-24, declared that "[o]f special significance" was the "Commission's civil enforcement authority, which will help insure that correction of election law violations will not depend entirely on action by a Department of Justice that has traditionally ignored such abuses." 120 *Cong. Rec.* S

[84] That provision is not even found in the 1974 FECA Amendments, but in the original 1971 FECA, which did not establish an FEC. Pub. L. 92-225, Title 4, § 404, Feb. 7, 1972, 86 Stat. 20. The 1974 Amendments contain no severability clause.

18529 (daily ed. Oct. 8, 1974). He also referred to the Commission as "independent," *ibid*.

Similarly Senator Javits, a strong supporter of the FECA Amendments, said:

> "A most important feature of the bill is the independent Federal Election Commission which will enforce the new law. The Commission will have the power to bring civil suits under the new law and will be a great improvement over the present weak system."

120 *Cong. Rec.* S 18538 (daily ed. Oct. 8, 1974).

Representative Frenzel, a key sponsor of the FECA Amendments, likewise emphasized the Commission's independence and its civil enforcement powers. In fact, Representative Frenzel made no mention in his analysis of any Commission powers other than those integral to law enforcement. 120 *Cong. Rec.* H 10331 (daily ed. Oct. 10, 1974). Representative Heckler made the following defense of the Commission during floor debate:

> "One of the most important provisions of the legislation before us is the creation of a strong and independent Federal Election Commission which will oversee all Federal elections and be empowered to enforce the new law by subpenaing witnesses, conducting investigations of campaign abuses, and by bringing civil suits to court." 120 *Cong. Rec.* H 10344 (daily ed. Oct. 10, 1974).

The intent of Congress was clearly to create a strong commission, on the model of the independent regulatory agency such as the ICC, whose principal function would be

to enforce the law with vigor.[85] Congress obviously failed to give the Commission the independence that would permit the Commission to carry out its mandate to enforce the FECA. The remedy is a simple one. Since the Commission cannot as presently constituted perform its vital functions, the Commission itself should be invalidated. Congress may then, if it wishes, reestablish the Commission with its enforcement powers (with respect to those substantive provisions of the law which are constitutional; many are unchallenged by appellants, see p. 14 n. 10, *supra*) largely intact,[86] taking care that the constitutional scheme of appointment is followed. Merely to excise those powers found to be impermissible would result in the existence of a type of commission which was never contemplated by those who created the FEC.

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[85] A further indication of congressional intent is 2 U.S.C. § 437d (a) (8), which provides that the rulemaking powers given the FEC shall only be exercised in accordance with chapter 5 of Title 5, U.S.C., the Administrative Procedure Act. The APA defines "agency" so as *not* to include Congress. 5 U.S.C. § 551 (1) (A). Thus it appears that Congress had in mind that the Commission, rather than being an arm of Congress, would be an independent regulatory agency to which the APA would apply.

[86] Congress cannot grant an independent and properly appointed commission all of the FEC's powers. For example, no authority may disqualify a person from future political candidacy. See p. 85 n. 62, *supra*. Also, the FEC may not — in any incarnation — force the Attorney General to bring suit. See pp. 103-04, *supra*.

F. The Unconstitutional Vagueness of the Statute, Coupled with the Legislative Veto, Gives Incumbent Members of Congress the Unbridled Discretion To Regulate the Political Practices of Themselves and Their Challengers.

So far the Commission has adopted two rules. Both have been vetoed — one by the Senate, the other by the House (pp. 107-08, *supra*). It is now plain that the vast discretionary powers over political speech which the Act creates will be exercised, on an *ad hoc* basis, at least as much by Congress itself as by the Commission. And these *ad hoc* decisions will frequently involve, as the regulation rejected by the Senate did, immensely potent questions of whether the Act as implemented is even more discriminatory in favor of incumbent Members of Congress, and against challengers, than the statutory text itself. One might have expected that a larger measure of Commission independence would have been endured by Congress, and a larger measure of impartiality evidenced, until this litigation had been decided. Surely no greater restraint can be expected from future congressional actions if this legislation and the Commission structure, including the legislative veto, are upheld.

We have lodged with the Clerk 20 copies of the Senate debate on the so-called "office account" regulation, 121 Cong. Rec. S 17873-89 (daily ed. Oct. 8, 1975). Although this debate dealt with only one very narrow area among the vast array of matters governed by the challenged legislation, a careful reading is richly enlightening as to many of the points we have tried to highlight in this brief and in our previous brief. It is hard to say which senatorial attitude emerges most vividly from these pages — a firm determination that Congress, not the Commission, shall have the primary and final word in interpreting and applying the Act;[87] an urgent concern that the interests of

[87] 121 Cong. Rec. S 17875 (Senator Hatfield), 17876 (Senator Pell), 17883 (Senator Stevens), 17887 (Senator Humphrey), 17889 (Senator Bellmon).

incumbents not, to say the least, be disadvantaged;[88] a feeling of frustration that the Commission's rules are confusing, indeed unintelligible;[89] a growing belief that the statute itself is unintelligible, and in some of its apparent implications absurd;[90] an uneasy awareness that in this murky area one misinterpretation by a candidate or campaign official can lead to jail;[91] and, on the part of at least one Senator, an evolving conviction that the legislation is both unwise and unconstitutional as an invasion of freedom of speech.[92]

[88] 121 Cong. Rec. S 17874 (Senator Cannon), 17875-76 (Senator Pell), 17880, 17882 (Senator Stevens), 17881 (Senators Ford, Pell), 17884-85 (Senator Huddleston), 17886-87 (Senator Huddleston), 17889 (Senators Morgan, Javits).

[89] 121 Cong. Rec. S 17874 (colloquy between Senators Cannon and Johnston), 17887-78 (Senator Hatfield), 17878 (Senator Pell), 17882 (Senators Cannon, Stevens), 17883 (Senator Stevens), 17884 (Senator Huddleston), 17886-87 (Senator Humphrey), 17888 (Senator Cannon).

[90] 121 Cong. Rec S 17879 (colloquy between Senators Clark and Johnston), 17879-80 (colloquy between Senators Clark and Packwood) 17880 (colloquy between Senators Clark and Stevens), 17881-82 (colloquy among Senators Ford, Clark, Huddleston, Pell and Hatfield), 17883 (Senator Clark), 17886-87 (Senator Humphrey), 17887 (Senator Pastore). Commentators are likewise becoming increasingly aware of the almost incredible complexity both of the statute and of the Commission's regulations, forms and other requirements and of the burdens, expense and perils they impose on those subject to them. *E.g.*, Pincus, "Making Campaign Rules Complex," Washington Post, Sept. 15, 1975, at A 22, col. 3.

[91] 121 Cong. Rec. S 17880 (Senator Pell), 17882 (Senators Hatfield and Stevens). To the same effect see Weaver, "Ford Campaign Panel Contends Election Unit Acts Beyond Law," New York Times, Oct. 22, 1975, at 27, col. 4.

[92] 121 Cong. Rec S. 17889 (Senator Muskie).

There must be better ways to repair the ravages of Watergate and to restore public confidence in government than this.

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JAMES L. BUCKLEY, ET AL., APPELLANTS

v.

FRANCIS R. VALEO, SECRETARY OF THE SENATE, ET AL.

JAMES L. BUCKLEY, ET AL., APPELLANTS

v.

FRANCIS R. VALEO, SECRETARY OF THE SENATE, ET AL.

ON APPEALS FROM THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE ATTORNEY GENERAL AS APPELLEE AND FOR THE UNITED STATES AS *AMICUS CURIAE*

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2 U.S.C. 456	104
18 U.S.C. 591(b)	66

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18 U.S.C. 591(c) — 66
18 U.S.C. 591(e) — 74-75
18 U.S.C. 591 (e)(1) — 62
18 U.S.C. 591(f) — 74-75
18 U.S.C. 591(f)(4)(A) — 57
18 U.S.C. 608 — 76
18 U.S.C. 608(a) — 73, 74
18 U.S.C. 608(a)(1)(C) — 73
18 U.S.C. 608(b)(1) — 66
18 U.S.C. 608(b)(5) — 66
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18 U.S.C. 608(c)(1)(C) — 47
18 U.S.C. 608(c)(1)(D) — 47, 73
18 U.S.C. 608(c)(1)(E) — 47, 73
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18 U.S.C. 608(e)(2)(B) — 74
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26 U.S.C. 9008(d)(3) — 104
26 U.S.C. 9010 — 104
26 U.S.C. 9011(b)(1) — 104
26 U.S.C. 9033 — 100
26 U.S.C. 9040 — 104

Miscellaneous:

Alford, *The Role of Social Class in American Voting Behavior*, 16 W. Pol. Q. 180 (1963) — 49
Americans for Democratic Action, *ADA Special Report: Advantages of an Incumbent Seeking Re-election* (August 25, 1975) — 47

Miscellaneous—Continued — Page

Brennan, *The Supreme Court and the Meiklejohn Interpretation of the First Amendment*, 79 Harv. L. Rev. 1 (1965) — 59
Campbell, Converse, Miller & Stokes, *The American Voter* (1960) — 48
Casper, *Williams* v. *Rhodes and Public Financing of Political Parties Under the American and German Constitutions*, 1969 Sup. Ct. Rev. 271 — 96
Comment, *The Constitutionality of Restrictions on Individual Contributions to Candidates in Federal Elections*, 122 U. Pa. L. Rev. 1609 (1974) — 65
Comment, *The Constitutionality of the Federal Ban on Corporate and Union Campaign Contributions and Expenditures*, 42 U. Chi. L. Rev. 148 (1974) — 65
113 Cong. Rec. 12165 (1967) — 93
Converse, Clausen & Miller, *Electoral Myth and Reality: The 1964 Election*, 50 Am. Pol. Sci. Rev. 321 (1965) — 49
Cooper, *The Legislative Veto and the Constitution*, 30 Geo. Wash. L. Rev. 467 (1962) — 112
Developments in the Law—Elections, 88 Harv. L. Rev. 1111 — 65, 72, 86
Emerson, *The System of Freedom of Expression* (1970) — 52, 70, 85, 90
Fleishman, *Freedom of Speech and Equality of Political Opportunity: The Constitutionality of the Federal Election Campaign Act of 1971*, 51 N.C. L. Rev. 389 (1973) — 53

Miscellaneous—Continued Page

Freund, *Commentary*, in Rosenthal, *Federal Regulation of Campaign Finance: Some Constitutional Question* (1971) 37
Ginnane, *The Control of Federal Administration by Congressional Resolutions and Committees*, 66 Harv. L. Rev. 569 (1953) 112
Hearings on H.R. 7612 and S. 372 Before the Subcommittee on Elections of the House Committee on House Administration, 93d Cong., 1st Sess. (1973) 36
H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. (1974) 29
Jackson, *A Presidential Legal Opinion*, 66 Harv. L. Rev. 1353 (1953) 112
Kallper, *The Effects of Mass Communication* (1960) 49
Kalven, *The Concept of the Public Forum: Cox* v. *Louisiana*, 1965 Sup. Ct. Rev. 1 40
Kalven, *The New York Times Case: A Note on "The Central Meaning of the First Amendment"*, 1964 Sup. Ct. Rev. 191 59
Key, *Politics, Parties & Pressure Groups* (1958) 49
Key, *Public Opinion and American Democracy* (1961) 49
Lazarsfeld, Berelson & Gaudet, *The People's Choice* (1944) 48-49
Lipset, *Political Man* (1960) 49
Meikeljohn, *Political Freedom* (1948) 38
Montesquieu, *Spirit of the Laws* (1748) 114

Miscellaneous—Continued Page

Newman & Keaton, *Congress and the Faithful Execution of the Laws—Should Legislators Supervise Administrators?*, 41 Calif. L. Rev. 565 (1953) 112
New York Times, The, July 21, 1975, p. 10, col. 3 37, 62
Nicholson, *Campaign Financing and Equal Protection*, 26 Stan. L. Rev. 815 (1974) 53
Note, *Congressional Requisites and Fair Elections: The Case of the Franking Privilege*, 83 Yale L.J. 1055 (1974) 47
Nozick, *Anarchy, State, and Utopia* (1974) 53
Rawls, *A Theory of Justice* (1971) 53
Redish, *Campaign Spending Laws and the First Amendment*, 46 N.Y.U. L. Rev. 900 (1971) 65
Schwartz, *Legislative Control of Administrative Rules and Regulations*, 30 N.Y.U. L. Rev. 1031 (1955) 112
Sharp, *The Classical American Doctrine of "The Separation of Powers,"* 2 U. Chi. L. Rev. 385 (1935) 115
S. Rep. No. 93-170, 93d Cong., 1st Sess. (1973) 29
S. Rep. No. 93-310, 93d Cong., 1st Sess. (1973) 29
S. Rep. No. 93-689, 93d Cong., 2d Sess. (1974) 29
Stone, *Fora Americana: Speech in Public Places*, 1974 Sup. Ct. Rev. 233 40
Watson, *Congress Steps Out: A Look at Congressional Control of the Executive*, 63 Calif. L. Rev. 983 (1975) 111-112

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-436

JAMES L. BUCKLEY, ET AL., APPELLANTS

v.

FRANCIS R. VALEO, SECRETARY OF THE SENATE, ET AL.

No. 75-437

JAMES L. BUCKLEY, ET AL., APPELLANTS

v.

FRANCIS R. VALEO, SECRETARY OF THE SENATE, ET AL.

ON APPEALS FROM THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE ATTORNEY GENERAL AS APPELLEE AND FOR THE UNITED STATES AS *AMICUS CURIAE*

INTERESTS OF THE ATTORNEY GENERAL AND THE UNITED STATES

The Attorney General is a named defendant in this action. The Attorney General as a party, however, joins only the separate portion of this brief that addresses the problem of the scope of the Federal Election Commission's powers, which apparently trench on authority reserved to the Executive by Article II of the Constitution.[1] The Department of Justice represents the Federal Election Commission and its members, who are also parties.

The United States recognizes that this case presents difficult questions close to the core of our system of government. Whether these particular attempts to purify the electoral process can be reconciled with the First Amendment is a matter of vital interest to the United States, which has the responsibility of vindicating both concerns in light of the dual commands to "preserve, protect and defend the Constitution of the United States" and to "take care that the Laws be faithfully executed." In these circumstances, the United States will set forth its views as *amicus curiae* in the true sense of that phrase with respect to the First Amendment issues. We present and analyze the considerations and issues on all sides that, we believe, will be crucial to this Court's deliberations.

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[1] The Federal Election Commission has retained special counsel to represent it on this question.

OPINIONS BELOW

The opinion of the district court certifying the case to the court of appeals (I A. 22-35) is reported at 387 F. Supp. 135. The order of the court of appeals remanding for findings of fact (I A. 80-85) is not reported. The district court's findings of fact and recertification (II A. 1-760) are not reported. The opinions of the court of appeals *en banc* (J.S. App. 1505-1623) and the three-judge district court (J.S. No. 75-437 App. 1a-5a) are not yet reported.[2]

JURISDICTION

The judgments of the court of appeals *en banc* (J.S. App. 1624-1625) and the three-judge district court (J.S. No. 75-437 App. 1a-5a) were entered on August 15, 1975. Notices of appeal to this Court were filed on August 21, 1975 (J.S. App. 1626-1627; J.S. No. 75-437 App. 6a-7a). The jurisdiction of this Court rests upon 28 U.S.C. 1253 and 2 U.S.C. 437h(b).

QUESTIONS PRESENTED

The district court certified nine constitutional questions to the court of appeals and three-judge district court. These questions are presented here by appeal and are set forth at J.S. App. 1582-1586.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional provisions are set out at Pl. Br. 2-4.

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[2] J.S. denotes the jurisdictional statement in No. 75-436.

The Federal Election Campaign Act Amendments of 1974, P.L. 93-443, 88 Stat. 1263; the Federal Election Campaign Act of 1971, 86 Stat. 3; and Subtitle H of the Internal Revenue Code of 1954, as amended, are set out in Volume III of the Appendix.

STATEMENT

In light of the multiple briefs being filed in this Court, we omit a separate statement of the facts and proceedings below, which are summarized in Appendix B of the opinion of the court of appeals (J.S. App. 1586-1589).

SUMMARY OF ARGUMENT

The constitutionality of the contribution and expenditure controls of FECA will be determined in large measure by the Court's choice among competing lines of cases establishing different models of review of First Amendment claims. Many cases hold that political speech is strongly protected by the First Amendment, and that this protection is not diminished simply because the speech appears as a purchased advertisement. Other cases hold, however, that political speech is subject to regulation when compelling governmental interests require such a result; the "fairness doctrine" of the Federal Communications Commission and the restrictions upon partisan political activity of civil servants are two examples of such restrictions upon political speech.

Still a third approach permits Congress to regulate activities other than communication, when the statute fulfills an important purpose unrelated to speech, the effect of the statute upon speech is incidental, and other channels of communications remain open. While none of these lines of cases is squarely controlling, analogies can be drawn to all of them. The Court's selection among them, and their application to FECA, will depend upon its assessment of the effects of FECA and the interests it is designed to serve.

The disclosure provisions of FECA should be evaluated by balancing the costs and benefits involved. Disclosure may both discourage the individual from associating with others and impede his ability to express himself vicariously through his political associations. On many occasions this Court has indicated that these are important interests protected by the First Amendment, and accordingly has held disclosure statutes unconstitutional. It has upheld disclosure statutes, however, when those statutes have been designed to secure information important to the functioning of the democratic process, and have been no more intrusive than necessary to bring that information to light. The central questions with respect to disclosure here, therefore, are whether FECA's disclosure provisions are necessary to achieve such a legislative aim, and whether that aim is sufficient to justify the effect of disclosure upon the freedom of speech and association.

There is nothing suspect in principle about the public financing provisions of FECA. Although FECA taxes some people to pay for other people's speech, such transfers of revenues are a central feature of a majoritarian democracy; taxation is the accepted method of enabling the republic to engage in projects that many people disapprove. However, because the public financing provisions touch on the ability of candidates to speak, and indirectly upon the ability of the people to cast an effective ballot for candidates of their choice, the statute must not unduly discriminate among the people and groups that are designated as the beneficiaries of the public funds. Whether FECA so discriminates depends upon whether the method the statute uses to select and offer funds to "serious" candidates adequately distinguishes the "serious" from the "frivolous" without unnecessarily favoring the established parties.

Finally, we submit that the grant of enforcement powers to the Federal Election Commission is unconstitutional. The Constitution separates the power to legislate from the power to execute the laws, granting the former to Congress and the latter to the President and Officers appointed under Article II. The Commission, however, is an arm of Congress, a legislative agency by its own admission. Most of its members are appointed by Congress, and Congress has reserved a veto power over many of its actions. Just as the executive branch cannot make the laws, so Congress (or its delegate, the Commission) cannot enforce them. The Commission's powers to seek

judicial enforcement of FECA, to promulgate some types of regulations binding upon those who enforce FECA, and to disqualify candidates for office, consequently trench upon powers reserved by Article II to the executive branch. The Commission's other powers do not, and we do not question them. Moreover, we agree with the court of appeals that most of the questions with respect to the Commission's authority are not ripe for adjudication.

ARGUMENT

This is a case of first impression and one enormously important to American political processes.[3] In an effort to help the Court with its analysis, the United States, as *amicus curiae*, will first discuss the various groupings of First Amendment cases whose rationales may be seen as competing with one

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[3] Standing alone, each of the constitutional issues presented here is of paramount importance to the future governance of the United States; with these issues combined in one lawsuit, the task of adjudication pressed upon this Court is one of enormous proportions.

The significance of these issues; their number and complexity; the vast array of prior constitutional decisions that would need to be analyzed, evaluated, distinguished or applied; the operation of the electoral process and the tradition and practices evolved in two centuries that must be assessed at every turn; the relatively abstract context in which these issues are presented for resolution and the rush to have them finally decided—all these factors raise a considerable question whether it is a proper exercise of the judicial function under Article III of the Constitution for a court to pass upon FECA now in one momentous constitutional decision. Cf. *Rescue Army* v. *Municipal Court*, 331 U.S. 549.

another for control of the issues in this case relating to campaign contributions and expenditures. We will attempt to show that no group of cases automatically governs this case, but that each offers rationales that may be thought relevant and illuminating. That done, we turn in the second half of the *amicus* presentation to a discussion of the themes and policies of the statute itself. These are quite complex and, though the statute's various provisions are interrelated, the considerations vary from topic to topic.

Because we intend this to be a true *amicus* brief, one that attempts to assist in analysis without pointing the way to particular conclusions, we shall do no more than analyze the case law and the statute. The result is intended to be a brief that supplements those of all the parties.

I. FIRST AMENDMENT CASE LAW SUGGESTS THREE ALTERNATIVE APPROACHES TO THE ISSUES HERE.

The Federal Election Campaign Act is a unique attempt to deal with the political process of the United States. Other laws have regulated incidental aspects of the political process: laws forbid corruption, vote fraud, voter intimidation; laws regulate the time and place of political speech; laws require disclosure of financial contributions to candidates. The Federal Corrupt Practices Act sets limits on candidate and committee expenditures, but the constitutionality of those provisions has never been resolved.

No other statute in our nation's history has comprehensively regulated the conduct of political campaigns for the offices of President, Senator, and Representative, reaching not only candidate activities but also the amount and method of citizen participation. Whether such a statute can be sustained will depend in large measure upon the conceptual framework within which the constitutionality of the Federal Election Campaign Act is assessed.

Three competing lines of cases express differing rationales and supply alternative frameworks for judgment. First, many cases proclaim political speech to be the core value of the First Amendment and strictly guard against interference with the political process. Second, other cases recognize governmental regulation of the amount or balance of political speech as proper when certain conditions obtain. The obvious example are cases upholding the Federal Communications Commission's regulation of broadcasting. Finally, still other cases permit regulation of conduct that takes the form of political expression when certain limiting criteria are met.

Each of these alternative frameworks or rationales has its own standards that control and limit its application. These lines of cases are by no means inconsistent with one another. Rather, they address different balances of First Amendment considerations and competing governmental interests. For that reason, we express no view about the preferable analysis, but we do attempt to isolate and state the relevant factors in order to assist the Court in its choice.

A. The General Proposition That Political Speech Is Rarely Regulable.

The line of cases denying power to inhibit political speech may be illustrated by two of them: *New York Times Co.* v. *Sullivan*, 376 U.S. 254, and *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127.

In *Sullivan* an elected city official obtained a libel judgment under Alabama law against the Times and four individuals who placed an advertisement in the newspaper inaccurately ascribing certain acts to him as the supervisor of the Montgomery police. This Court reversed the judgment on First Amendment grounds.

In an opinion by Mr. Justice Brennan, the Court rejected at the outset the contention that the constitutional guarantees of freedom of speech and of the press were inapplicable to the Times and the individual petitioners because the libelous statements were published as part of a paid, "commercial" advertisement. The Court disposed of this argument succinctly, saying the advertisement

> communicated information, expressed opinion, recited grievances, protested claimed abuses, and sought financial support on behalf of a movement whose existence and objectives are matters of the highest public interest and concern. See *N.A.A.C.P.* v. *Button*, 371 U.S. 415, 435. That the Times was paid for publishing the advertisement is as immaterial in this connection as is the fact that newspapers and books are sold. *Smith* v. *California*, 361 U.S. 147, 150; cf. *Bantam Books, Inc.* v. *Sullivan*, 372 U.S. 58, 64, n. 6. Any other conclusion would discourage newspapers from carrying "editorial advertisements" of this type, and so might shut off an important outlet for the promulgation of information and ideas by persons who do not themselves have access to publishing facilities—who wish to exercise their freedom of speech even though they are not members of the press. Cf. *Lovell* v. *Griffin*, 303 U.S. 444, 452; *Schneider* v. *State*, 308 U.S. 147, 164. The effect would be to shackle the First Amendment in its attempt to secure "the widest possible dissemination of information from diverse and antagonistic sources." *Associated Press* v. *United States*, 326 U.S. 1, 20. To avoid placing such a handicap upon the freedoms of expression, we hold that if the allegedly libelous statements would otherwise be constitutionally protected from the present judgment, they do not forfeit that protection because they were published in the form of a paid advertisement. [*Sullivan, supra*, 376 U.S. at 266.]

The Court considered the damage award "against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open" (376 U.S. at 270). It found that the presumption of malice was inconsistent with the federal rule that "actual malice" —knowledge of falsity or reckless disregard for the truth—be shown where a public official seeks to recover for libel because of untrue criticism of his official conduct. Any less stringent rule would unduly deter public criticism of government, "the very

center of the constitutionally protected area of free expression" (376 U.S. at 292).

Sullivan indicates that political expression lies at the core of the area protected by the First Amendment.[4] The case speaks of criticism of the acts of public officials, which was what was involved there, but it cannot be supposed the Court mean to elevate criticism of political figures above countervailing praise, which is criticism of the critics, or above any expression of political ideas directly related to the operation of our governmental institutions.

The speech in *Sullivan* was not less protected because paid for and the threat to speech freedoms was perceived even though there was no prior restraint but only the deterrence of future speech by the prospect of damages for libel. But knowingly false speech amounting to libel is not part of the political expression fostered by the First Amendment and is therefore not protected.

In *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127, the Court interpreted the Sherman Act so as not to prohibit combinations of railroads from using the political process to attack and to attempt to destroy their trucking rivals. The construction given the Sherman Act, however, was explicitly influenced by First Amendment considerations. The district court and court of

[4] See also *Monitor Patriot Co.* v. *Roy*, 401 U.S. 265, 272: "it can hardly be doubted that the [First Amendment] has its fullest and most urgent application precisely to the conduct of campaigns for political office."

appeals held for the plaintiff truckers though recognizing that mere efforts to influence legislation on the enforcement of existing laws could not be made illegal. The judgment rested upon the finding that the railroads' publicity campaign was malicious and fraudulent: its sole purpose was to destroy competitors and it deceived the public authorities because the publicity matter prepared for and paid by the railroads was disguised as the spontaneously expressed views of independent persons and civil groups.

Mr. Justice Black, writing for a unanimous Court, concluded that the judgment could not be supported even by these additional factors. Bad motives were not sufficient: "The right of the people to inform their representatives in government of their desires with respect to the passage or enforcement of laws cannot properly be made to depend upon their intent in doing so" (365 U.S. at 139). Nor could the judgment be supported by the plaintiffs' false attribution of views to third parties, though the technique, the Court noted, "is one which falls far short of the ethical standards generally approved in this country" (365 U.S. at 140).

Noerr stands for the proposition that attempts to prohibit political activity raise serious First Amendment problems even when the activity is "improperly" motivated and shabbily conducted. The Court interpreted the Sherman Act not to reach such speech and publication largely because of the pressure of constitutional values.

Sullivan and *Noerr* are representative of much case law of the First Amendment, a case law that shows political expression to be at the center of the unbridgeable freedom of speech, that protects paid-for political speech, that fears the deterrence caused by punishment after speech and abhors a restraint that prevents speech, and, finally, a case law that protects speech even when self-seeking and deceptive.

B. Cases Permitting Regulation Of Political Speech In The Light Of Particular Circumstances And Governmental Needs.

There are cases that permit the regulation of political speech and hence, to some as yet undefined extent, limit the thrust of the *Sullivan-Noerr* line of authority. Illustrative cases permitting regulation are *Red Lion Broadcasting Co.* v. *Federal Communications Commission*, 395 U.S. 367; and *Civil Service Commission* v. *Letter Carriers*, 413 U.S. 548. The meaning of these cases may become clearer if they are contrasted with *Miami Herald Publishing Co.* v. *Tornillo*, 418 U.S. 241, and *Mills* v. *Alabama*, 384 U.S. 214.

Red Lion dealt with the personal attack and political editorializing regulations promulgated by the Federal Communications Commission to implement its "fairness doctrine." The fairness doctrine creates a "right to reply" when a broadcaster engages in or permits personal attacks on the integrity of a person or, in an editorial, supports or opposes a candidate. Petitioner, Red Lion, supported by the broadcast media, contended that these rules under the fairness

doctrine infringed its right to freedom of expression, pointing out that the Commission's rules directly regulated speech. It asserted that the rules not only would influence the content of broadcasts, but also would deter stations from putting controversial material on the air.

The Court concluded, however, that Red Lion's predictions of the consequences of regulation were speculative and that the government is entitled to engage in such regulation of the broadcast media. The Court observed that the government, not the private station, owns the radio frequency, and, the Court went on, the government may limit the use of broadcast equipment for many of the same reasons that it may limit the use of sound-amplifying equipment. Broadcasting only one point of view may inform the public, but the information is one-sided. A station presenting certain points of view without rebuttal effectively dominates political discourse over the airwaves. In such circumstances, one man's broadcasting is another man's enforced silence.

> Where there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish. If 100 persons want broadcast licenses but there are only 10 frequencies to allocate, all of them may have the same "right" to a license; but if there is to be any effective communication by radio, only a few can be licensed and the rest must be barred from the airwaves.
> * * *

> By the same token, as far as the First Amendment is concerned those who are licensed stand no better than those to whom licenses are refused. A license permits broadcasting, but the licensee has no constitutional right to be the one who holds the license or to monopolize a radio frequency to the exclusion of his fellow citizens. There is nothing in the First Amendment which prevents the Government from requiring a licensee to share his frequency with others and to conduct himself as a proxy or a fiduciary with obligations to present those views and voices which are representative of his community and which would otherwise, by necessity, be barred from the airwaves. [*Red Lion, supra*, 395 U.S. at 388-389].

Red Lion stands for the proposition that political speech is not inviolate; other overriding interests entitle the government to limit access to a method of communication, or to establish rules governing the discussion or presentation of certain subjects.

Letter Carriers, too, permits regulation of speech by subject matter. The Hatch Act provides that most civil servants of the federal government are forbidden to engage in partisan political campaigning. They cannot make partisan political speeches at public functions, cannot publicly support a candidate, cannot be an officer of any political organization, and cannot run in partisan campaigns for office. The speech and conduct prohibited by the Hatch Act is, as *Sullivan* pointed out, communication at the very core of the First Amendment. The Court upheld the Hatch Act, however, concluding that other interests overrode the First Amendment interest in political speech by public employees. The Court stated:

> Until now, the judgment of Congress, the Executive, and the country appears to have been that partisan political activities by federal employees must be limited if the government is to operate effectively and fairly, elections are to play their proper part in representative government, and employees themselves are to be sufficiently free from improper influences. [*Letter Carriers, supra*, 413 U.S. at 564.]

The merits and demerits of speech are ordinarily left to the marketplace of ideas. Other speakers compete in the marketplace and that competition is the public's safeguard. Although this model, which *Sullivan* accepted, pertains to most political speech, the political speech of civil servants raised special problems.

> It seems fundamental * * * that employees in the Executive Branch of the Government, or those working for any of its agencies, should administer the law in accordance with the will of Congress, rather than in accordance with their own or the will of a political party. They are expected to enforce the law and execute the programs of the Government without bias or favoritism for or against any political party or group or the members thereof. A major thesis of the Hatch Act is that to serve this great end of Government—the impartial execution of the laws —it is essential that federal employees * * * not take formal positions in political campaigns,

and not run for office on partisan political tickets. Forbidding activities like these will reduce the hazards to fair and effective government. * * *

There is another consideration in this judgment: it is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative Government is not to be eroded to a disastrous extent. [*Letter Carriers, supra*, 413 U.S. at 564-565.]

The interest in preserving the integrity of our governmental process is so powerful, then, that it justifies putting "off limits" to millions of civil servants the ordinary political discourse and participation that is indisputably protected by the First Amendment in other contexts. *Miami Herald Publishing Co.* v. *Tornillo, supra*, throws additional light on the rationales of *Red Lion* and *Letter Carriers*.

The newspaper business has some, though of course not all, of the characteristics of the broadcast industry. Broadcast journalism is limited by the exigencies of the radio spectrum; printed journalism is limited by the high cost of publication and delivery, and the limited supply of advertising money to keep the ventures going. In most cities there are more radio stations than newspapers and, as the Court recognized in *Tornillo*, newspaper monopolies have developed that make it difficult if not impossible for many points of view to find an effective forum. The State of Florida sought to rectify this lack of ability to communicate by a statute providing that newspapers, like the broadcast media, owed an obligation of fairness to carry replies to personal attacks during the conduct of a political campaign. The Chief Justice's opinion for the Court noted (418 U.S. at 252):

> It is argued that the "uninhibited, robust" debate is not "wide-open" but open only to a monopoly in control of the press.

But the Court concluded that (418 U.S. at 257): "Government-enforced right of access inescapably 'dampens the vigor and limits the variety of public debate.'" The Court held that the nation's commitment to full and free political debate outweighed the conclusion of the legislature that the debate in the pages of newspapers may be "unfair."

If *Tornillo* casts light on *Red Lion*, then *Mills* v. *Alabama, supra*, is usefully compared to *Letter Carriers*. The statute at issue in *Mills* provided that newspapers could not publish comments on candidates on election day. The State argued that last-minute political speech is "unfair" to candidates who may lack time to respond. The governmental interest here, like that in *Letter Carriers*, was in preserving the integrity of an important process in our system of government. The unfair influence of last-minute charges may both undermine the operation of the election mechanism and, as importantly, make the election appear to be unfair. The statute in *Mills*, like the statute in *Letter Carriers*, left broad room for debate in the marketplace of ideas; it did not affect the quality of the debate because, by hypothe-

sis, it affected speech only when it was too late for "debate," when it was too late to "expose through discussion the falsehood and fallacies" of the presentation (*Whitney* v. *California*, 274 U.S. 357, 377 (Brandeis and Holmes, JJ., concurring)). The Court unanimously held the law unconstitutional. Mr. Justice Black, writing for the Court, found the arguments in support of the statute beside the point: "no test of reasonableness" could support the statute because the First Amendment protects the right of the people to "praise or criticize governmental agents and to clamor and contend for or against change * * *. * * * It is difficult to conceive of a more obvious and flagrant abridgment of the constitutionally guaranteed freedom of the press" (384 U.S. at 219, 220).

The *Red Lion—Letter Carriers* model allows Congress to regulate political communications, at least when the regulation does not discriminate between particular messages within the regulated area. It allows Congress to regulate communication because the communication itself is in need of regulation, either so that more diverse messages may be sent and received or so that government may perform more effectively and fairly.

C. Regulation Of Communication Incidental To Other Governmental Purposes Can Be Permissible.

United States v. *O'Brien*, 391 U.S. 367, illustrates another type of political speech regulation. It holds that government can restrict political communications incidentally, when such restrictions are necessary results of other legitimate governmental endeavors.

O'Brien, unlike *Red Lion* and *Letter Carriers*, does not permit the government to control communication for its own sake.

O'Brien dealt with a statute requiring every draft-age male to possess a Selective Service registration card and to refrain from destroying it. The Court concluded that this statute served many important purposes, none of them related to any restrictive effect upon communications: registration certificates served as proof that an individual had registered; they facilitated communication between the registrant and his local board; they reminded the registrant of his obligation under the laws; they made forgery and evasion easier to detect and punish. The Court held (391 U.S. at 377):

> we think it clear that a government regulation is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

The Court concluded that the law challenged in *O'Brien* met these tests. Congress had the power to raise and support armies, so the statute would (absent First Amendment problems) be well within its power. The statute fostered the four important governmental interests described above. These governmental interests were related to the implementation of the draft, not to the regulation of communications,

and the government was regulating the "non-speech" element of the registrant's activity—the act of burning the card. That activity did "not necessarily convey any message and hence arguably could be regulated without effectively repressing [the registrant's] ability to express himself" (*Cohen* v. *California*, 403 U.S. 15, 18). And, the Court held, the statute was the least restrictive reasonable way for the government to achieve its non-speech-related goals.[5]

D. The Three Models Of First Amendment Analysis Discussed Provide Competing Analogies For The Disposition Of The Present Litigation, But None Of Them, Without More, Automatically Decides The Constitutionality Of The Federal Election Campaign Act.

The First Amendment approaches we have outlined are offered as frameworks for the analysis of the constitutionality of the Federal Election Campaign Act and its various components. None of them is automatically dispositive since they offer only competing major premises.

The court of appeals held that *O'Brien* supplied the correct major premise and reasoned that the FECA is justified because "the Government has a clear and compelling interest in safeguarding the integrity of elections and avoiding the undue influence of wealth"

[5] Indeed, it could be persuasively argued that the conduct at issue in *O'Brien*—the burning of draft cards—had communicative value only *because* the action was illegal; it simply would not do for the offender to then turn around and assert that because his deeds expressed an idea, they could not be prohibited.

(J.S. App. 1517). There are in political campaigns, the court said, both speech and non-speech elements. Apparently the non-speech element is money, the regulation of which, under *O'Brien*, involves "incidental limitations on First Amendment freedoms" (J.S. App. 1516).

In judging whether the court of appeals' adoption of the *O'Brien* approach was appropriate, it is necessary for this Court to decide whether money in political campaigns is correctly characterized as a non-speech element. The answer depends upon the relationship of money to political speech.

Money often has a close relation to speech, as the Court recognized in *Sullivan* and reiterated last spring in *Bigelow* v. *Virginia*, No. 73-1309, decided June 16, 1975, slip op. 11-12). A conclusion that speech could be regulated because it was paid for "might shut off an important outlet for the promulgation of information and ideas by persons who do not themselves have access to publishing facilities" (*Sullivan*, *supra*, 376 U.S. at 266). A question here, therefore, is whether the FECA, by regulating money, unduly shuts off important outlets for those without access to publishing facilities. That depends upon the statute's provisions, analyzed in the next section of this brief.

This Court has dealt directly with regulation of the money that produces speech in only one case. In *Grosjean v. American Press Co.*, 297 U.S. 233, the State had levied a tax of two percent on the gross revenues of periodicals selling more than 20,000 copies

per week. The law was neutral among the topics of discussion that could appear in the taxed newspapers. It deterred large circulations only, it burdened circulation but did not prohibit it. The Court unanimously struck the law down as unconstitutional. A similar monetary burden on private speech might be open to challenge, for publication of a newspaper does not increase the protection to which a speaker is entitled (*Pell* v. *Procunier*, 417 U.S. 817; *Saxbe* v. *Washington Post Co.*, 417 U.S. 843, 850); it would follow even more clearly that prescription of a maximum sum that the newspaper could use in printing its editions would constitute a restraint on speech. See also *United States* v. *Congress of Industrial Organizations*, 335 U.S. 106, 143-145 (Rutledge, J., concurring); *United States* v. *United Auto Workers*, 352 U.S. 567, 594-598 (Douglas, J., dissenting). Cf. *Deras* v. *Myers*, 535 P.2d 541, 546 (Ore.)[6] (holding unconstitutional a spending limitation upon candidates of 25 cents per voter); *Bare* v. *Gorton*, 84 Wash. 2d 380, 385-386, 526 P.2d 379, 382;[7] *Vanasco* v.

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[6] "Even personal appearances, debates, and press releases are not self-generating and if they are to constitute a substantial channel of communication, normally money must be expended to make them come about."

[7] "The defendants argue that the section merely imposes a regulation on the amount of money which can be spent in communicating. However, freedom of speech and press involve more than the bare right to speak and publish. To say otherwise is to ignore reality. To communicate effectively with the mass of voters, one * * * must use the media in one form or another."

Schwartz, E.D.N.Y., 74 Civ. 1533, decided July 14, 1975 (three-judge court).

Grosjean is not automatically dispositive here because the FECA is intended to vindicate much more profound governmental interests related to the purity of the electoral process than was the license tax involved there. Nevertheless, the case represents one vector in the analysis.

The analogy made to *O'Brien* is strengthened by the "commercial speech doctrine," allowing the regulation of certain commercial statements. Speech may be regulated under the commercial speech doctrine if it "propose[s] a commercial transaction" (*Bigelow*, *supra*, slip op. at 11-12). This analogy may be qualified or partial, however; the "commercial speech" cases often seem to turn on the content of the proposal, rather than the exchange of money. Perhaps the discriminatory advertisement in *Pittsburgh Press Co.* v. *Pittsburgh Commission on Human Relations*, 413 U.S. 376, could equally well have been forbidden if it had been published free of cost. Similarly, in *Southeastern Promotions, Ltd.* v. *Conrad*, 420 U.S. 546, the constitutional wrong alleged was the failure to *rent* a hall for the purpose of staging a profit-making play; the Court approached the case as if the only open question was whether the content of the play justified the refusal to rent the hall. It is not absolutely clear, therefore, that the presence of money in a communication transaction is an adequate ground to invoke the *O'Brien* model.

Money sometimes can be the equivalent of speech, but on other occasions it is not. Money is also a com-

modity. It can be exchanged for goods and services other than communications; it can be abused in its own right. The commercial aspects of money are indisputably subject to regulation if they fit within the *O'Brien* model. Money used to bribe other individuals—be they bank tellers, voters or congressmen (*United States* v. *Brewster*, 408 U.S. 501)—is subject to congressional control. Money may be solicited by a candidate with improper promises of later favorable official action or threats of later unfavorable action. In these situations money is clearly a non-speech element of a campaign and there is no First Amendment objection to regulation.

Money can serve both speech and non-speech ends; this Court's selection of an approach to the First Amendment may depend, as it did in *O'Brien* itself, upon its evaluation of the reasons FECA regulates money. Some of those reasons appear to relate to the effect of money on speech. As the Court wrote in *O'Brien* (391 U.S. at 382), its case was "unlike one where the alleged governmental interest in regulating conduct arises in some measure because the communication allegedly integral to the conduct is itself thought to be harmful." Many if not most of the benefits attributed to FECA stem directly from its impact upon communication. Limitations on communications are the major means FECA employs to reduce the "disparity [in ability to communicate] due to wealth" (J.S. App. 1517) and contribute substantially to the Act's tendency "to equalize both the relative ability of all voters to affect electoral outcomes, and

the opportunity of all interested citizens to become candidates" (*ibid.*); only if communications are limited can "noisy" political speech be curtailed; and FECA's limitations on communications will help spare candidates the time and effort that now must be devoted to fund raising. But in *O'Brien* every one of the statute's goals (391 U.S. at 378-380) could be achieved without regard to any effect upon communication.

Some aspects of the FECA seem, therefore, to regulate money in campaigns not because money is a non-speech element but rather because money is a proxy for speech. That is to say, the amount of money contributed and spent is regulated in order to limit the amount of speech. The court of appeals recognized this and approved: "* * * the statute taken as a whole affirmatively enhances First Amendment values. By reducing in good measure disparity due to wealth, the Act tends to equalize both the relative ability of all voters to affect electoral outcomes, and the opportunity of all interested citizens to become candidates for elective federal office" (J.S. App. 1517). To this extent, both the statute and the court of appeals rely upon a *Red Lion* approach rather than *O'Brien*.[8]

In order to assess the utility of the *Red Lion* approach, it is necessary more fully to discuss the arguments in support of FECA and the effects of

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[8] Indeed, this equality theme, so prominent in FECA, suggests, as the court of appeals also recognized, the early "one man, one vote" cases, such as *Reynolds* v. *Sims*, 377 U.S. 533, and *Wesberry* v. *Sanders*, 376 U.S. 1 (see J.S. App. 1517).

its many provisions. *Red Lion* depended upon the government's special interest in the broadcast spectrum, the limited availability of that spectrum and the government's method of regulation, which gave others the chance to speak without deterring or restricting the broadcaster's speech. The *Red Lion* approach will offer support for FECA if the interests that prompted the enactment of FECA are weighty enough to call for extending that approach to the political process at large and if FECA does so by an acceptable method. Those interests here are said to be the high cost of running for office, which allows the wealthy to exercise undue influence; the possibility that money can be exchanged for political favors; the possibility that monied candidates can "monopolize" political discussion and to this extent chill political discussion; and the effect of these factors and others upon the appearance of propriety in the most critical function of a representative democracy. We now discuss in greater detail these interests and FECA's method of furthering them.

II. LIMITATIONS ON CONTRIBUTIONS AND EXPENDITURES.

A. General Considerations.

1. *Justifications.*

The court of appeals invoked several general categories of arguments supporting FECA, concluding that all of them together, if not each of them individually, demonstrated a governmental interest sufficiently pressing to satisfy the standard of review. These justifications fall into four major categories:

(a) the high and rapidly increasing cost of campaigning for public office; (b) the fact that money can be put to illegal uses or derived from illegal sources; (c) the amelioration of the advantages possessed by incumbents running for reelection; and (d) the enhancement of First Amendment values, including greater equality of opportunity to speak and run for public office. We turn to an analysis of these asserted justifications.

a. *The high cost of running for office—an overview.*

A recurring theme in the legislative history of FECA [9] and in the opinion of the court of appeals [10] is that some remedy must be devised for the high and rapidly increasing cost of waging campaigns for office.

The conclusion that campaign costs are high implies a comparison with some other state of affairs. Certainly, campaigns cost more than they once did,

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[9] See H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. 3 (1974); S. Rep. No. 93-170, 93d Cong., 1st Sess. 1-2 (1973); S. Rep. No. 93-689, 93d Cong, 2d. Sess 5 (1974); S. Rep. No. 93-310, 93d Cong., 1st Sess. 1-2 (1973).

[10] As the court of appeals concluded (J.S. App. 1512-1513):

> An estimated $400 million was spent in 1972 for nomination and election campaigns—almost a 300% increase since 1952, in a period when the consumer price index rose 57.6%. In 1972, Presidential campaign spending alone totaled $94.4 million—up 67 percent from $56.4 million in 1968; up 147 percent from $38.1 million in 1964; and up 247 percent from $27.2 million in 1960. Findings IIA, ¶ 51; I, ¶¶ 39, 93, * * *.

Similar increases took place in Senate and House campaign costs. Findings IIA, ¶¶ 5-11 (II A. 326-441).

and that is only partly accounted for by inflation, but it is unclear that that fact, standing alone, has significance of constitutional dimensions.[11] The cost of election campaigns in 1972 was approximately $400 million for all candidates for all federal offices, or a little less than $2 for each citizen or $4 for each person of voting age. This sum may not, in the abstract, appear excessive for providing to voters information that enables them to perform one of the most important acts entrusted to them as citizens—choosing the representatives who will make decisions regarding federal laws and the federal budget.

Even if these sums were in fact too high by some relative measurement, it is still difficult to see why this, standing alone, would be a satisfactory ground upon which to predicate expenditure limitations. Congress presumably could not order publishers to lower their prices because it thought that books and newspapers had become "too expensive" for purchase by people of modest means. But if "high" price is not *by itself* a ground for such regulation, one must ask more specifically what is wrong with high prices.

In the case of political campaigns high costs may produce three more specific types of problems: (i) the opportunity for the wealthy, or special interest groups, to "purchase" a point of view; (ii) the consumption of the time of candidates in fund raising,

[11] Today's higher cost of running for office may result, for example, from the adoption of modern techniques (such as mass mail campaigns for contributions) so that candidates are reaching (and raising money from) more potential voters than ever before.

which prevents them from engaging in other campaign activities; (iii) the "noisy" communications produced by expensive campaigns may drown out other candidates or annoy those who hear them. We analyze each of these possibilities in turn.

(i) High costs allow the wealthy and special interest groups to exercise undue influence.

The court of appeals accurately pointed out that contributions from relatively well-to-do individuals, and from groups promoting their own interest, make up a substantial part of all contributions to political campaigns.[12] The concern is with having our political process under the control of those who put up the money and receive support in return. The question is whether this concern justifies restrictions upon freedom of speech.

It is important to recognize, first, that this concern

[12] During the 1974 campaigns approximately one percent of the people contributed approximately 90 percent of all campaign funds (Findings I, ¶ 10; II A. 54). Many contributions flow from groups, such as labor, business, agriculture and health associations, that are anxious to promote interests that they may not share in common with the public at large. These groups gave substantial sums to the 1974 congressional campaigns: labor groups donated $4.3 million, business groups $1.6 million, health groups $1.5 million, and agricultural groups $182,000 (Findings IIA, ¶¶ 96-97, 99; II A. 464-465). These contributions were lawful under existing law. (We discuss at pages 43-45, *infra*, the arguments concerning unlawful contributions.) Moreover, during the same contests 120 registered interest groups, on 278 occasions, donated sums aggregating $676,897 to two or more opposing candidates running for the same office, so that the interest group would have contributed to the victor, whomever that should turn out to be (Findings IIA, ¶ 104; II A. 467).

is relevant only to restrictions upon sums contributed; unless an expenditure ceiling is necessary to enforce the prohibition against disguised or surreptitious contributions, this justification does not support Congress' decision that candidates cannot *expend* sums received from small or "disinterested" donors. Moreover, it may often be difficult to discern whether substantial contributors donate in order to secure allegiance from candidates, or the donations follow candidate views articulated independently of the prospect for particular donations. Money of course can serve any cause and candidates may announce positions and then await support from those who agree. The fund-raising successes of diverse candidates suggest that money will be forthcoming to most serious candidates who take strong stands, no matter how different his views from those of the established order. If this is so, then, in such instances at least, the donors are the instruments of the candidates, rather than the reverse.

To a substantial extent, this "interest group" justification for FECA depends upon a belief that the wealthy and the parochial interest groups are too powerful, and that if candidates espouse the point of view of these contributors because of their contributions the result will be deleterious.[13] The viewpoint of such contributors will prevail not because it is more persuasive but because it has the most money behind it.

This worry is legitimate but *Thomas* v. *Collins*, 323 U.S. 516, cautions that this rationale may not be

[13] See also the discussion at pages 51-58, *infra*, concerning the augmentation of First Amendment values.

extended indefinitely. The State in that case had forbidden union organizers to speak unless they had obtained "organizers' cards;" it claimed that this statute was necessary to protect its citizens against organizers who had been "bought" by special interests and who would deceive the workers. The Court held the justification insufficient in spite of this "rational connection between the remedy provided and the evil to be curbed" (323 U.S. at 530), concluding that when the union organizer was engaged in no more than advocacy of legitimate goals, the source of his support did not justify State regulation (*id.* at 535-537).[14]

To the extent this justification for FECA rests upon the belief that the views of the wealthy and self-interested groups are overrepresented, it is subject to the counterargument that the First Amendment protects the promulgation of bloc views—even when those views are demonstrably antagonistic to the public welfare. *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127, suggests that special interest groups, no less than other potential speakers, are entitled to achieve such influence as they can through communicative devices. An expensive publicity campaign to influence the government, the Court stated, "falls clearly into the category of political activity" (365 U.S. at 140-141)

[14] *Bigelow* v. *Virginia, supra,* is to much the same effect, for the Court held that advertisements, even if "inimical to the public interest," can be published without regard to the source of the funds that paid for them (slip op. at 17).

protected by the First Amendment.[15] *Noerr*, however, is not dispositive here because it ultimately turned on a question of statutory construction, though that construction appears to have been influenced by First Amendment values, and did not involve campaign contributions.

One must consider as well that, in at least some respects, the role of the special interest groups may be desirable in our pluralist society.[16] In regard to

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[15] "Indeed, it is quite probably people with * * * a hope of personal advantage who provide much of the information upon which governments must act" (*id.* at 139).

[16] [The] asserted beneficial tendency of restrictions upon expenditures for publicizing political views, whether of a group or of an individual, is certainly counterbalanced to some extent by the loss of democratic processes resulting from the restrictions upon free and full public discussion. The claimed evil is not one unmixed with good.
* * *

The expression of bloc sentiment is and always has been an integral part of our democratic electoral and legislative processes. They could hardly go on without it.
* * *

There is therefore an effect in restricting expenditures for the publicizing of political views not inherently present in restricting other types of expenditure, namely, that it necessarily deprives the electorate, the persons entitled to hear, as well as the author of the utterance, whether an individual or a group, of the advantage of free and full discussion and of the right of free assembly for that purpose.

The most complete exercise of those rights is essential to the full, fair and untrammeled operation of the electoral process. * * *

For "undue influence" in this connection may represent no more than convincing weight of argument fully presented, which is the very thing the Amendment and the electoral process it protects were intended to bring

political campaigns, there is in any event the opportunity for the middle class, and even the poor, to pool resources to speak collectively in a more effective manner; many major campaigns in recent years have been financed almost entirely through small contributions. The expenditure limits of FECA apply to expenditures financed by small contributions no less than to expenditures financed by large contributions, however, and so FECA might, in some circumstances, prevent large numbers of people from banding together to communicate more effectively than do small numbers of wealthy people or organizations.

Finally, we observe that, even to the extent FECA is properly directed at the decrease of the role of money as a tool of interest-group expression in political campaigns, it is limited. Contributions and expenditures by corporations and labor groups are exempted from the spending and contribution controls to the extent they are not regulated by 18 U.S.C. 610, the Federal Corrupt Practices Act. FECA thus permits corporate or union contributions,[17] which almost by definition would be "special

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out. And one may question how far legislators may go in accurately assessing undue or disproportionate weight as distinguished from making substantially accurate findings and conclusions concerning corruption. [*United States* v. *Congress of Industrial Organizations*, 335 U.S. 106, 143, 144, 145 (Rutledge, J., concurring).]

[17] Section 610 permits labor unions and corporations to establish political action funds as long as they assemble such funds from "voluntary" contributions. Once the funds are established, they can be operated as a integral unit of the larger enterprise. *Pipefitters Local Union No. 562* v. *United States*, 407 U.S. 385.

interest" money, while it forbids contributions by voluntary associations and individuals. It is therefore conceivable that the net effect of FECA will be to increase rather than decrease the perceived disproportionate role of special interest contributions. This observation, however, may not have constitutional significance since Congress is not usually required to deal with all of a problem it addresses.

(ii) Fund raising consumes candidate time that otherwise would be devoted to campaigning.

The court of appeals found support for the statute in the fact that in order to raise large amounts of money to support a campaign, "candidates [are] compelled to allot to fund raising increasing and extreme amounts of time and energy" (J.S. App. 1513). A past finance chairman of the Democratic National Committee testified that a presidential candidate is required to spend 70 percent of his time in pursuit of funds.[18]

There is, of course, another side to this problem. If the idea is that expenditure limits relieve the pressure of raising funds, thereby giving the candidate more time to engage in speaking, there may be effective alternative means of accomplishing this end. For example, public financing of election campaigns, quite independent of restrictions upon contributions and expenditures, will provide some relief.

[18] Testimony of Joseph Cole, in Hearings on H.R. 7612 and S. 372 Before the Subcommittee on Elections of the House Committee on House Administration, 93d Cong., 1st Sess. 138 (1973).

A restriction on contributions will increase this effect even without an accompanying restriction on expenditures; once candidates are precluded from drawing upon wealthy donors who command personal attention, campaign fund raising may turn more to direct mail efforts that are sparing of the candidate's time.[19]

(iii) Campaigns with large budgets tend to be "noisy" and can drown out other candidates and annoy voters.

It may be argued in support of FECA that excessive campaign spending is simply excess noise. It enables some candidates to "drown out" others by outspending them and at the same time be so intrusive as to annoy the voters, who are compelled to listen.[20]

[19] On the other hand, it could be argued that although FECA enables a candidate to use a greater proportion of his campaigning time for "actual" campaigning, it also compels candidates to start campaigning earlier than ever before. Because large contributions cannot be accepted, the candidates' major source of funds will be smaller donations that take long periods of time to accumulate. See *The New York Times*, July 21, 1975, p. 10, col. 3. Candidates are compelled to declare their candidacy at earlier dates in order to commence these lengthy fund-raising efforts; the earlier declarations and campaigning may be to the detriment of their other duties.

[20] See Freund, *Commentary*, in Rosenthal, *Federal Regulation of Campaign Finance: Some Constitutional Questions* 71 (1971):

> The right to speak is, I submit, more central to the values envisaged by the First Amendment than the right to spend. We are dealing here not so much with the right to personal expression or even association, but with dollars and decibels. And just as the volume of sound may be limited by law, so the volume of dollars may be limited, without violating the First Amendment.

Because FECA is neutral on its face among the things candidates can say, it does not prevent an idea from being expressed but simply sets a limit on how many people can express it, how often, and how loudly. As Professor Meikeljohn put it (Meikeljohn, *Political Freedom* 26 (1948)): "What is essential is not that everyone shall speak, but that everything worth saying shall be said."

However, the "noisy" communications are not raucous, as was the loudspeaker in *Kovacs* v. *Cooper*, 336 U.S. 77. An analogy to *Kovacs* might rest upon an argument that the people have a right not to be annoyed by "excessive" costly communication, but FECA differentiates among speakers and according to subject matter. For example, newspaper and broadcast media are exempt from expenditure limitations, so they can engage in the excessive or intrusive political expression that FECA forbids when engaged in by candidates; as to content, FECA deals with only one kind of speech—political speech—by regulating the amount of money devoted to it in campaigns. This Court repeatedly has held, though in other contexts than this, that discrimination among speakers and according to content of speech is impermissible. See, *e.g.*, *Erznoznik* v. *City of Jacksonville*, No. 73-1942, decided June 23, 1975; *Police Department of Chicago* v. *Mosley*, 408 U.S. 92.

Content and speaker differentiations aside, there may be a problem with the assertion that political speech during campaigns has reached an offensively loud level, since the amount of political communica-

tion even then is dwarfed by the bulk of commercial advertisements that fill the airwaves and newspapers, and by the television and radio programs, and newspaper stories and columns these advertisements support. It may be that a necessary foundation for upholding the law on this particular theory is that voters are in fact being annoyed by current campaign communication.

Finally, as *Erznoznik* makes clear, *Kovacs* means no more than that "captive audiences" cannot be thrust upon. See *Terminiello* v. *Chicago*, 337 U.S. 1; *Gregory* v. *Chicago*, 394 U.S. 111; *Mosley, supra; Cohen, supra.* The audiences for political speech are not entirely captive; they are free to turn the page, switch channels, and stay home rather than attend speeches and rallies.

The plain, if at times disquieting, truth is that in our pluralistic society, constantly proliferating new and ingenious forms of expression, "we are inescapably captive audiences for many purposes." *Rowan v. Post Office Dept.*, 397 U.S. [728] at 736. Much that we encounter offends our esthetic, if not our political and moral, sensibilities. Nevertheless, the Constitution does not permit the government to decide which types of otherwise protected speech are sufficiently offensive to require protection for the unwilling listener or viewer. Rather, absent the narrow circumstances described above, the burden normally falls upon the viewer to "avoid further bombardment of [his] sensibilities simply by averting [his] eyes." *Cohen* v. *California*, 403 U.S. at 21. See also *Spence* v. *Washington*, 418 U.S. 405, 412 (1974).

Erznoznik, supra, slip op. at 5-6 (footnote omitted). Congress usually does not have the option of foreclosing the rights of willing listeners simply because some individuals will be offended before they have an opportunity to turn their attention elsewhere.[21] But it is also true that laws may exclude even political speech from certain areas where it would annoy persons, and, to this degree, the rationale under examination may be supported by the cases permitting regulation of the times, places, and manner of speech.

The second branch of the analogy to *Kovacs*—that large quantities of speech by a monied candidate "drown out," or at least make ineffective, the speech of his opponent—seems weak. There is no basis in the record for concluding that this case presents an "outshouting" problem, in which the clamor of one candidate makes it difficult to hear other candidates. There is not the slightest hint that if Candidate A buys space in a newspaper or time on television, Candidate B will be shut out; most likely, both will be accommodated, or some commercial advertiser displaced.[22] Nor is there any reason to believe that politicians now command "excessive" amounts of communications space; the contrary may well be true.

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[21] Cf. Stone, *Fora Americana: Speech in Public Places,* 1974 Sup. Ct. Rev. 233, 262-263; Kalven, *The Concept of the Public Forum: Cox* v. *Louisiana,* 1965 Sup. Ct. Rev. 1.

[22] The total spending limit for a Presidential campaign is $20,000,000, and for a senatorial campaign 12 cents per voter—in either case barely enough to send one first class letter to each voter and considerably less than the advertising budgets of large corporations.

In politics "volume" of communication may be essential because candidates are competing not only against each other but against every other form of communication.

(iv) Preserving the appearance of propriety and freedom from influence—the analogy to *Letter Carriers.*

The court of appeals concluded (J.S. App. 1517) that

> The Constitution * * * takes account of the governmental interest in curbing the *appearance* of undue influence, in order to avoid the corrosion of public confidence that is indispensable to democratic survival. In *Civil Service Commission* v. *Letter Carriers,* 413 U.S. 548, 565 (1973), Justice White articulated this:
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> > [I]t is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative Government is not to be eroded to a disastrous extent.

The argument continues that even direct limitations on political expression are permissible when necessary to protect the integrity of elections. There is plainly a compelling governmental interest in preventing government from coming under such a cloud of suspicion of undue influence that it no longer commands the respect of the people.

Though the thrust of *Letter Carriers* and its com-

panion case, *Broadrick* v. *Oklahoma*, 413 U.S. 601, the only two cases discussing the First Amendment implications of similar statutes, supports FECA, it is arguable whether they provide compelling support for the contribution or expenditure limits of FECA. *Broadrick* stated (413 U.S. at 616) that civil servants can be subjected to restrictions upon speech that "if engaged in by private persons would plainly be protected by the First and Fourteenth Amendments."

It might be thought that there are important differences and similarities between civil servants and the public at large, and between civil servants and candidates, that call for a difference in treatment. Civil servants, as contrasted to the public at large, are self-selected and can recapture full political freedom by resigning; those who are not civil servants retain full rights of speech and assembly, so that restrictions upon civil servants do not affect the entire system of freedom of expression. FECA, by contrast, affects all individuals alike, and no individual desiring greater freedom to express himself can gain that freedom.

More important, however, the reason for the restrictions imposed by the Hatch Act is that civil servants must both do, and seem to do, justice according to the statutes they administer; there is no role for political considerations in the day-to-day functioning of government, and the involvement of civil servants in politics would jeopardize their role as impartial intermediators between the citizen and our laws.

But there is a similar concern with respect to candidates for public office; members of Congress make the laws, and should not perform (or seem to perform) this task in exchange for monetary contributions.

There are, of course, differences between civil servants and politicians that are relevant here. While a desire to "take civil servants out of politics" is readily understandable, there could be no parallel desire, at least under democratic government as we know it, to "take politicians out of politics." Members of Congress, and the President, make the policy civil servants must apply, and the policy-makers legitimately can be sensitive to "political" considerations including the needs and desires of "pressure groups."

b. ***Campaign money can be put to illegal uses or derived from forbidden sources.***

During the 1972 presidential campaign there occurred a large number of abuses which are among the occurrences now collectively referred to as "Watergate." As the court of appeals wrote (J.S. App. 1515-1516; footnotes omitted): "Revelations of huge contributions from the dairy industry, a number of corporations (illegally) and ambassadors and potential ambassadors, made the 1972 election a watershed for public confidence in the electoral system. * * * After extensive investigation, Congress concluded that such corrupt and pernicious practices are more likely to occur when there are no effective limits on amount of campaign expenditure."

The Supreme Court of Oregon responded to a simi-

lar argument in favor of state campaign expenditure limits: [23]

> We fail to see how these evils [of Watergate] are relevant * * * . The "break-in," the bribery, the "wiretap," the use of government servants for private political ends, the "cover-up," the various "dirty tricks," and the other moral and legal deviations characterizing "Watergate" had little or nothing to do with the fact that large sums of money were available to a political party.

In regard to bribery, however, it is not so easy to dismiss this justification for FECA's contribution and expenditure limits. A "bribe" may take the form of a sum of money exchanged in return for the promise of favorable treatment or to avoid the prospect of unfavorable treatment. Such promises can be implied as well as express; such prospects can be imagined as well as real. As a result much money will change hands for reasons that border on, or appear to be, bribery, but are not; much real bribery will not be provable in a court of law. It is exceptionally hard to detect exchanges of money for action. An alternative open to Congress is thus to reduce the candidate's incentive to seek and accept large contributions, which can be accomplished by setting limits on the expenditures of each candidate. Perhaps expenditures can be monitored more effectively than contribu-

[23] *Deras* v. *Myers*, 535 P.2d 541, 546 (Ore.) (note omitted). The Oregon court suggested that the State legislature draft a statute directed to these morally wrong acts but not sweeping within its prohibitions many unobjectionable communicative endeavors.

tions; even if candidates and donors attempt to avoid the law by failing to report a contribution, the money it represents might be detected as "outgo" during the campaign. Once expenditure ceilings are established, candidates often will be able to secure their legal limit of funds without being required to rely upon the large contributions that are, or reasonably may be confused with, money exchanged for votes.

The court of appeals thus concluded that the need to avoid the receipt of funds from illegal sources or for illegal reasons was strong support for a limitation upon expenditures in view of:

> the compelling government interest in preserving the integrity of the system of elections through which citizens exercise the core right of a free democracy of selecting the officials who will make and execute the laws under which we all must live. [J.S. App. 1511; footnote omitted.]

The questions remaining in this regard are one of degree: is this justification so pressing that it permits substantial restrictions on the rights of political activity? Could it be redressed by some less restrictive means or, perhaps, is it an evil that we are compelled to suffer without redress, lest the cure be worse than the disease?

c. *Reduction of the advantages enjoyed by incumbents.*

It is argued that the contribution and expenditure limits of FECA will reduce the advantage enjoyed by incumbents because they no longer will be able to enjoy the increased publicity and staff that

superior financing can provide. The contrary argument is that FECA will increase the advantages incumbents already enjoy because challengers no longer will be able to outspend incumbents and because incumbents enjoy certain advantages not valued by FECA or included within its ceilings. These conflicting approaches and "speculative * * * assertions," the court of appeals found (J.S. App. 1540-1541), are not satisfactory arguments either for or against the constitutionality of the statute.

In order to demonstrate why this is so, we begin with four indisputable facts. First, incumbents have significant advantages over most challengers. Incumbents have name recognition, a factor of real importance in many if not most races; challengers rarely approach incumbents in this factor until well into the campaign, unless the challenger holds some other public office. Incumbents have a performance record on issues that are likely to recur; this record attracts both volunteer help and contributions from those who desire to keep a man of such views in a position of power. Because the incumbent is charged by his office with making political decisions, he usually has access to unpaid coverage in the printed and broadcast media in which to explain his performance in office; challengers have no similar forum. And, of course, incumbents have the frank and a large staff drawing salaries from the public treasury; these and other resources can be put to good use long before the formal campaign begins. A recent study by Americans for Democratic Action set a value of

$488,000 per member of Congress per year on the accoutrements of office provided with public money (although this figure is on the high side).[24]

The second consideration, however, is that these advantages are accompanied by disadvantages. Incumbents also acquire political debts to be paid, and the stands they take on public issues, while pleasing to some constituents, will be anathema to others. An incumbent has ample opportunities to "make enemies" and so create support for the challenger in his next election campaign. For any given member of Congress the disadvantages of incumbency may outweigh the advantages; it seems safe to say, however, in light of the fact that most incumbents are re-

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[24] Americans for Democratic Action, *ADA Special Report: Advantages of an Incumbent Seeking Re-election* (August 25, 1975). Compare this figure with $70,000, the maximum allowable expenditure in both primary and general elections for any candidate for the House in a State with more than one representative (18 U.S.C. 608(c)(1)(C) and (D)). See also II A. 16-21.

The ADA figure is, however, considerably overstated. It includes many items (such as rental value of an incumbent's Washington offices) that produce no electoral benefit and which a challenger would not seek to duplicate. The same can be said for a drapery allowance and the cost of air fare between Washington and the home district (the challenger will, presumably, be in the district throughout). However, benefits such as office space in the member's district ($7,200); franking, stationery and newsletter allowance ($95,928); part of the value of staff services ($227,200); congressional television recording studios, research and speech writing services (no value assigned); and other services and benefits are of indisputable aid to an incumbent. See also Note, *Congressional Requisites and Fair Elections: The Case of the Franking Privilege*, 83 Yale L.J. 1055 (1974).

elected, that the advantages of incumbency usually outweigh the disadvantages.[25]

The third fact is that incumbents who prevail almost always spend more than their challengers (see J.S. App. 1540, n. 105). But, fourth, in cases in which challengers outspend incumbents, the challengers' chances of prevailing dramatically increase. Incumbents faced challengers in 323 House races in 1974 (II A. 442). Challengers outspent incumbents in 71 of these races (II A. 443). Only 40 challengers defeated incumbents (*ibid.*), but of the 71 races in which challengers outspent incumbents, 22 challengers prevailed (*ibid.*). It is not difficult to see that the challenger who was able to outspend the incumbent was significantly more likely to prevail than the challenger who could not,[26] but it is exceeding difficult to know what produces these effects.[27]

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[25] There are, of course, a large number of "safe" districts in which the party adherence of the voters is so out of balance that only one party has a realistic opportunity to prevail at the general election. In that event the advantages and disadvantages of incumbency are relevant only during the primary of the party with the greater support in the district.

[26] These figures include the races in one-party districts in which the challengers had no reasonable prospect of success. In almost all of these districts the incumbents outspent the challengers. The data in the text therefore overstates the challengers' gain from outspending an incumbent: it would be more useful to be able to examine the effects of spending only in the districts that have some history of electing representatives from a party other than the party of the incumbent.

[27] But see Campbell, Converse, Miller & Stokes, *The American Voter* (1960); Lazarsfeld, Berelson & Gaudet, *The*

Even if one assumes that the communications with the voters that money can facilitate are important in persuading them to vote for the candidate, it would be necessary to assess the marginal effect of each dollar's worth of communication. An incumbent may be so well known, or so widely disliked, that $1000 worth of communication by him could change only 10 votes; the voter has already received so many communications from or about an incumbent that one additional communication is unlikely to add to his knowledge about the incumbent and consequently unlikely to af-

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People's Choice (1944); Key, *Politics, Parties & Pressure Groups* (1958); Converse, Clausen & Miller, *Electoral Myth and Reality: The 1964 Election*, 59 Am. Pol. Sci. Rev. 321 (1965); Alford, *The Role of Social Class in American Voting Behavior*, 16 W. Pol. Q. 180 (1963). See the summary of voting studies in Lipset, *Political Man* chs. 7-9 (1960). The studies suggest that voting behavior can be predicted with a high degree of precision from sociometric data and attitudinal surveys, quite independent of candidate expenditures.

It is possible, moreover, that money is an effect rather than cause. Perhaps "popular" views, good volunteer organization, an unpopular incumbent, and so on, both ensure victory and attract money. That is, the candidate who attracts the most money may be the candidate who had the support needed to prevail at the polls anyway, and that underlying support simply expresses itself in different ways: more volunteers, more money, and more votes. This could explain why "winners" as a class seem to outspend "losers" as a class, whether the winners be incumbent or challengers—winners have more of everything, and depriving them of more money will not change things. Perhaps this hypothesis is true for some candidates and false for others; perhaps it is false for all. Our political science knowledge is simply insufficient to enable us to know the answer. Cf. Kallper, *The Effects of Mass Communication* (1960); Key, *Public Opinion and American Democracy* (1961).

fect his vote. But the voter is less familiar with the challenger, and so more likely to be affected by the challenger's communications. Perhaps $1,000 worth of communications by a challenger can change 100 votes and, as well, help the challenger frame the issues and influence policy even if he is not elected. This is nothing more than the law of diminishing returns applied to the political arena; a unit of speech is more potent for a newcomer than for one who has been speaking for a long time. If this is correct, then equality of campaign budget ceilings does not produce equality of results. The marginal dollars the challenger is prohibited from spending would have been worth far more in votes to the challenger than the marginal dollars the incumbent is prevented from spending would have been worth to him.[28] Equality of budget ceilings is then not equality of ability to influence the electorate.

We add, once more, that it is not known whether the foregoing accurately describes the actual inter-

[28] The net effect can be assessed only by multiplying the marginal "vote value" of each dollar in the relevant range by the number of dollars of spending curtailed. If incumbents regularly have spent more than the ceiling now imposed by FECA, while challengers have spent less, the effect on incumbents would be greater. (For example, if a marginal $1,000 is worth 100 votes to a challenger and 50 votes to an incumbent, and if the expenditure ceiling causes an incumbent to spend $30,000 less than he could raise while limiting the challenger to only $10,000 less than he could raise, the incumbent will "lose" 1,500 votes and the challenger 1,000, a net benefit of 500 to the challenger in spite of his higher marginal return per dollar of communication.)

play of forces in a political campaign. The very lack of knowledge—and the possibility, not yet disproven, that FECA is destructive of the interest in equality that is advanced in its behalf—cautions against attributing too much weight to arguments of this sort. As the court below recognized, the contention that FECA will ameliorate the advantages of incumbency is not an argument that lends support to a statute impinging on speech.

d. *Enhancement of First Amendment Values.*

The court of appeals concluded that FECA's effect upon freedom of speech is offset by its contribution to First Amendment values. It wrote (J.S. App. 1517):

> It would be strange indeed if, by extrapolation outward from the basic rights of individuals, the wealthy few could claim a constitutional guarantee to a stronger political voice than the unwealthy many because they are able to give and spend more money * * * .
>
> * * * * *
>
> There is a positive offset to plaintiffs' invocation of the First Amendment in the presentation by intervening defendants that the statute taken as a whole affirmatively enhances First Amendment values. By reducing in good measure disparity due to wealth, the Act tends to equalize both the relative ability of all voters to affect electoral outcomes, and the opportunity of all interested citizens to become candidates for elective federal office. This broadens the choice of candidates and the opportunity to hear variety [*sic*] of views.

We now discuss, in turn, the companion arguments that the contribution and expenditure limits of FECA will provide citizens with a more equal voice in political affairs and a more nearly equal opportunity to run for office.

(i) A more nearly equal opportunity to express political opinions.

According to Professor Emerson, "[t]he most challenging problems in First Amendment theory today lie in the prospect of using law affirmatively to promote more effective functioning of the system of freedom of expression." [29] He argued that "the government must affirmatively make available the opportunity for expression as well as protect it from encroachment" in order to ensure "the ability to speak despite economic or other barriers.' [30] "[T]he tests must be framed in terms of accommodation of interests within the system, nondiscrimination, promotion rather than deterrence of expression, and the like." [31]

By placing a limitation upon the contributions and expenditures of those who can afford sums exceeding the statutory maxima, FECA makes people more nearly equal in the ability to express themselves.[32]

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[29] Emerson, *The System of Freedom of Expression* 627 (1970).

[30] *Id.* at 629.

[31] *Ibid.*; footnote omitted.

[32] A closely related argument is that if additional spending leads to additional votes for a candidate, then a person (candidate or supporter) with more money can have a greater effect on the election, just as if he could himself cast more votes than other people. Casting multiple votes is clearly illegitimate and inconsistent with the idea of one man, one vote. Compare Nicholson, *Campaign Financing and Equal Protection*, 26 Stan. L. Rev. 815, 819-820 (1974) and Rawls, *A Theory of Justice* 225-228 (1971), with Fleishman, *Freedom of Speech and Equality of Political Opportunity: The Constitutionality of the Federal Election Campaign Act of 1971*, 51 N.C. L. Rev. 389, 459-465 (1973) and Nozick, *Anarchy, State, and Utopia* 150-153, 204-216 (1974).

But this argument is incomplete unless its proponent explains how additional spending yields additional votes; presumably dollars are not stuffed in the ballot boxes. In most versions of the argument, the mediating factor that turns money into votes is speech. More money leads to more communications supporting the candidate. More communications supporting the candidate leads to additional votes. Now the argument is squarely that "more speech" must be forbidden, because it yields more votes. There may be some tension here with principles long accepted by this Court. Speech cannot be forbidden simply because, in the long run, it may lead to action; advocacy cannot be proscribed simply because it may be effective. See *Brandenburg* v. *Ohio*, 395 U.S. 444; *Noerr*, *supra*; *United States* v. *Congress of Industrial Organizations*, *supra*, 335 U.S. at 145 (Rutledge, J., concurring) (" '[U]ndue influence' in this connection may represent no more than convincing weight of argument fully presented, which is the very thing the Amendment and the electoral process it protects were intended to bring out."); *Thomas* v. *Collins*, *supra*, 323 U.S. at 537 ("The First Amendment is a charter for government, not for an institution of learning. 'Free trade in ideas' means free trade in the opportunity to persuade to action, not merely to describe facts.").

By so doing, it may well encourage those who previously had thought their voice "too small" to have an impact to speak up. If this happens, the diversity of views presented may well increase and listeners

and readers may be presented with a broader menu of communications from which to choose.

Red Lion Broadcasting Co. v. *Federal Communications Commission*, 395 U.S. 367, supports this argument by analogy; just as the "fairness doctrine" of *Red Lion* augments the First Amendment rights of the many to speak and to hear diverse views over the public airwaves, so FECA augments the First Amendment rights of the many to speak and hear more diverse views; candidates and their views will receive more nearly equal exposure, to the benefit to all. Cf. *Associated Press* v. *United States*, 326 U.S. 1, 20.

The question then becomes whether *Red Lion* was intended to be the exception or the model for political communications. Its holding was predicated not only upon the assumption that the public owns the airwaves but also upon the assumption that there is such a shortage of broadcast space that a decision by a station to broadcast one point of view could shut out other points of view. The issue becomes whether that situation, or one sufficiently similar, obtains outside the broadcast industry. Is there evidence or reason to believe that speech by one political faction will preclude response by others? Of course, another assumption underlying FECA is that when one faction speaks, reply by another occurs and costs money, leading to an upward spiral of campaign costs. This upward spiral, provoked by an ever-increasing amount of political speech, is a problem quite outside the *Red Lion* fairness doctrine.

It should be recognized that the "enhancing" of First Amendment values through contribution and expenditure limitations comes about by silencing those who now speak more, not by enabling those who do not now speak to speak more in the future. The government may not be constitutionally compelled to enhance the opportunity for speech, see *Columbia Broadcasting System, Inc.* v. *Democratic National Committee*, 412 U.S. 94, but when it acts toward this end the question is whether it must do so by augmenting the opportunities for speech by those who are now relatively silent, rather than by "leveling" those who now propagate the most speech.

The argument for enhanced First Amendment values, as applied to the contribution and expenditure restrictions of FECA, may be that some individuals must surrender their rights to speak so that others will have a greater share of the fewer "speech rights" that remain. But this entails the troubling proposition that "uninhibited, robust, and wide-open" debate (*New York Times Co.* v. *Sullivan*, *supra*, 376 U.S. at 270) is sometimes to be avoided. Mr. Justice Stewart remarked, concurring in *Columbia Broadcasting System, Inc.* v. *Democratic National Committee*, *supra*, 412 U.S. at 133, that if such an argument based on First Amendment values is accepted, "[f]reedom of the press would then be gone. In its place we would have such governmental controls upon the press as a majority of this Court at any particular moment might consider First Amendment 'values' to require. It is a frightening specter." The First Amendment forbids government to cut off one person's speech on

the ground that he has had "enough" of that good, or that "enough" has been heard of his views (*id.* at 143).

In *Miami Herald Publishing Co.* v. *Tornillo*, 418 U.S. 241, a unanimous Court declined to apply the *Red Lion* doctrine outside the broadcast media. The Court's opinion in *Tornillo* began with a lengthy recitation of the goals that might be served by a right to reply statute: the Court accepted the propositions that there was a media monopoly in the Miami area, that the media prevented access by candidates who "needed" access, that journalists have become advocates rather than observers, that candidates were not equally able to speak, and so on. The list of social ills redressed by the right to reply statute in *Tornillo* is similar to some of the perceived ills addressed by FECA. But *Tornillo*, relying upon *Sullivan*, concluded that all of those reasons together do not furnish grounds to fetter political speech, because "under the operation of the * * * statute, political and electoral coverage would be blunted or reduced" (418 U.S. at 257; footnote omitted).

It was of course the choice of the paper's editor in *Tornillo* what and how much he would or would not say in his paper; but it likewise has been the choice of the candidate what and how much he will say in his campaign, and it has been the choice of the citizen what and how much he will say either directly or vicariously in a political campaign.[33]

[33] *Tornillo* cannot be distinguished on the ground that it dealt with the freedom of the press, which has been preserved

While facilitating the right of individuals to speak and to communicate their views to others is a goal Congress can pursue (and justifies in part the public financing provisions of FECA), it must be decided whether Congress may foster this end by inhibiting (or prohibiting) the speech of those who now speak, rather than by increasing the opportunities open to those who need assistance.[34]

(ii) A more nearly equal opportunity to become a candidate.

The conclusion of the court of appeals that the contribution and expenditure limits of FECA promote "the opportunity of all interested citizens to become

by FECA (18 U.S.C. 591(f)(4)(A)), rather than with the speech of natural individuals such as candidates. An individual's freedom is not enhanced by ownership of a printing press; the freedom of the press secured by the First Amendment is basically the freedom of the press to enjoy the freedom of speech secured to individuals. *Pell* v. *Procunier, supra*, 417 U.S. at 832-835; *Saxbe* v. *Washington Post Co., supra.*

[34] There is also an argument, albeit an essentially empirical one, that the contribution and expenditure limitations of FECA will not equalize political opportunities but simply shift the locus of inequality. Candidates and potential speakers have unequal access to volunteer support, unequal opportunity to benefit from "issue" groups that engage in publicity designed to increase the salience of an issue on which the candidate may have a well-known position, and unequal access to other nonmonetary sources of potential support. The total inequality may be the same after FECA as before; those who would seek to foster inequality simply must use different resources. And, of course, all of these forms of support can be exchanged for the candidate's promises, express or implied, of favorable treatment.

candidates" (J.S. App. 1517) is open to similar analysis. Surely equal opportunity to run for public office is to be assiduously fostered. And, as surely, government cannot, except in furtherance of some compelling interest, limit a candidate's access to a position on the ballot. See *Lubin* v. *Panish*, 415 U.S. 709; *Storer* v. *Brown*, 415 U.S. 724. There is also a compelling constitutional mandate that all votes shall be of equal weight. *Reynolds* v. *Sims*, 377 U.S. 533. Although government may not be permitted to diminish or hinder access to the ballot by erecting unduly high barriers such as filing fees, it may not necessarily follow that government may be allowed to foster equality by removing the advantages—such as speech—of the better-endowed candidates and their supporters.

2. *Arguments against the contribution and expenditure limitations.*

The arguments against the contribution and expenditure limits of FECA have, by and large, been canvassed in the sections of this brief analyzing the possible governmental interests justifying the restrictions (pages 22-57, *supra*). In the main, the contention is that because FECA establishes restrictions upon speech, it cannot survive—an argument that must be qualified by the observation that some governmental interests are so compelling that they support suitably narrow restrictions. It may be that it is not enough that "some" speech is left untouched by FECA, but that is true only if the speech that

FECA affects is itself shielded against regulation by the First Amendment.

The heart of the argument against the statute is that the bad effects of some political activity cannot be cauterized by restraining all political speech; the First Amendment has its most urgent application to political advocacy, and FECA is directed "narrowly" to that very core of the Amendment's protections.[35] We have discussed above the arguments derived from *New York Times Co.* v. *Sullivan* (pages 10-12, *supra*) and *Noerr Motor Freight* (pages 12-14, *supra*). Another case strongly relevant—although not ultimately controlling because it involved a direct control on the press rather than a control on expenditures—is *Mills* v. *Alabama*, 384 U.S. 214. A State statute prohibited newspaper editorials advocating or opposing any candidate to be published on election day. The rationale for the statute was clear enough: the disappointed candidate would not have sufficient time to answer the last-minute editorial, which therefore could unfairly work to his detriment. The Court unanimously held that the law was unconstitutional, writing (384 U.S. at 219) that the law "silences the press at a time when it can be most effective. It is difficult to conceive of a more

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[35] See the concurring opinion of Mr. Justice Brandeis in *Whitney* v. *California*, 274 U.S. 357, 375-377. Cf. *Brandenburg* v. *Ohio*, *supra*; Kalven, *The New York Times Case: A Note on "The Central Meaning of the First Amendment"*, 1964 Sup. Ct. Rev. 191; Brennan, *The Supreme Court and the Meiklejohn Interpretation of the First Amendment*, 79 Harv. L. Rev. 1 (1965).

obvious or flagrant abridgment of the constitutionally guaranteed freedom of the press."

It is hard to see why the Court would have countenanced the prohibition in *Mills* if, instead of prohibiting the editorial, the State had provided that no newspaper shall spend money to print last-minute editorials praising or denouncing candidates—or, to make the analogy even closer to FECA, if the same effect had resulted from an overall limitation by the State on the amount of money each newspaper could spend on political editorials. Yet if the expenditure of money does not distinguish *Mills*, it would be distinguishable only if the press has greater rights to speak than do individuals, an argument implicitly rejected in *Sullivan* and explicitly rejected in *Pell* v. *Procunier*, *supra*.

It may be, therefore, that in order to uphold FECA the Court will have to conclude that the governmental interests involved are so pressing that they would permit prohibition of speech by the press itself as well as by candidates and their supporters. Would the outcome in *Mills* have been different if the State had prohibited a candidate or one of his supporters from speaking on election eve (or at some earlier time) because he had exhausted a quota of "expensive speech"? The Court's answer to that question will be dispositive of many aspects of this case. *Mills* itself took an absolutist position with respect to political speech: "We hold that *no* test of reasonableness can save a * * * law from invalidation * * * when that law makes it a crime * * * to do no more than urge people to vote one way or another in a

publicly held election" (384 U.S. at 220; emphasis added).

However, it remains to be decided whether, in view of the revelations of Watergate, the changing perceptions of the electoral process, and the considered judgment of Congress that FECA is needed to cure the evils perceived, *Mills* should be qualified in the circumstances presented here.

Plaintiffs rely upon a series of essentially empirical arguments against the statute. They contend, for example, that FECA, by reducing the role of the "patron" in politics, will decrease the ability of small or unpopular parties to disseminate their views and attract support. If the argument is meant to indicate that patrons or large donors disproportionately support small or struggling parties, so that the contribution and expenditure limits of FECA would in fact narrow the range of political discourse by preventing some classes of ideas from entering the arena, it states (if true) an important argument against the statute.[36] One of the most significant arguments in support of FECA is its neutrality—it does not discriminate among types of political speech or particular speakers, but evenhandedly restricts the speech of all. If, in fact, patrons disproportionately support certain classes of parties or foster un-

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[36] To the extent this objection simply addresses the fact that the "patron's" speech has been limited, there is no greater reason to protect his speech if it is unpopular or unusual than if it would support majority parties; ideas are fungible for First Amendment purposes.

popular ideas, FECA, although neutral on its face, may not be neutral in practice.[37]

In regard to FECA's effect upon "seed money," the argument is that by eliminating a candidate's ability to rely upon large contributions, FECA has compelled him to seek a much larger number of small contributions, that mail solicitations are the most efficient way to seek such contributions, and that funds needed to finance the initial mailing and the initial communications[38] ("seed money") cannot now be raised in large donations from among a candidate's acquaintances.[39] Thus, the argument proceeds, the "seed money" itself must be raised in small donations, which is a difficult if not impossible task for a candidate who is not already quite well known, and the net effect of this process may well be to de-

[37] There is some tension between this argument against FECA and the argument, discussed at note 34, *supra*, that controls upon money simply shift the locus of inequality because the effects of money can be replaced with volunteer time, the support of "issue groups," and so on. They can be reconciled, however, with the observation that the patron may be instrumental in a party's or candidate's early days, before the positions they espouse have gained sufficient currency to attract other forms of support.

[38] According to *The New York Times* (July 21, 1975, p. 10, col. 3), by early July 1975 the seven declared candidates for the Democratic nomination for President had raised $10 million in contributions at a cost of $8 million, leaving a net return of but $2 million. No mail solicitations raised more than $2 for every dollar invested. Most of the candidates needed substantial "seed money" to launch their campaigns, and raised that money prior to the effective date of FECA.

[39] Because most loans are treated as contributions (18 U.S.C. 591(e)(1)), any large infusions may be beyond the reach of a candidate.

crease the number of people who can make effective campaigns for office, and to confine the opportunity to run to those who already hold some position of public visibility. However, only a sophisticated study of election campaigns for several years under FECA could tell whether candidates could obtain bank loans (which are not "contributions") or slowly amass small contributions, which might be sufficient alternatives. What must be decided now is whether, in light of the First Amendment, we can take the opportunity to find out.

B. Problems Unique To The Limitations On Contributions.

We turn to a discussion of some problems that the contribution and expenditure ceilings do not have in common.[40] We do not analyze in depth the par-

[40] The problems involved in limitations upon expenditures are analytically quite distinct from those involved in limitations upon contributions. In the case of expenditures, the problem is whether an individual (candidate or supporter), lawfully in possession of a sum of money, can use that money for the purpose of speaking. It is a purely personal question: can Congress tell an individual who is ready, willing and able to use money to speak that he cannot do so? In the case of contribution limits, there are two different problems, depending upon the point of view. Contributions cannot produce speech unless two independent actors—one with money and one desiring to use someone else's money for his own speech—can come together and collaborate. From the point of view of the would-be contributor, the question is one of vicarious speech. Does he have a First Amendment right to "hire" the candidate to express ideas for him, or to facilitate the candidate's expression by associating with him? From the point of view of the candidate, the question is one of soliciting aid. Does the candidate have a right to be "hired" as a speaker so that his own ability to communicate can be

ticular provisions of FECA; as before, we address the broader questions in an attempt to establish the framework within which the more particular decisions must be made.

From the point of view of the rights of the candidate, contribution limits indisputably restrain candidates' association and speech in some particular, but the restraining device is reasonably narrow. Contribution limits (without expenditure limits) are narrower than the restrictions upheld by this Court, albeit in a different context, in *Civil Service Commission* v. *Letter Carriers*, *supra*, and these narrow restrictions are directed with considerable accuracy to a discrete group—candidates for federal office—that may fairly be said to have accepted the restrictions as a condition of seeking office. Just as the government has an interest in ensuring propriety and the appearance of propriety in its bureaucratic employees, it has an interest in ensuring propriety and the appearance of propriety in its potential political governors.

The rights of the potential donor of funds are more seriously implicated by the contribution controls, and previous challenges to the constitutionality

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augmented? Contribution restrictions, although they partake of restrictions on speech, are therefore more closely associated with restrictions on political association. And restrictions on political association, although not favored (*Cousins* v. *Wigoda*, 419 U.S. 477; *Kusper* v. *Pontikes*, 414 U.S. 51), can be more easily supported than restrictions upon speech itself (cf. *Rosario* v. *Rockefeller*, 410 U.S. 752; *N.A.A.C.P.* v. *Alabama ex rel. Patterson*, 357 U.S. 449, 463; *Cousins*, *supra*, 419 U.S. at 487-490).

of contribution limitations have involved donors' rights.[41] Two sorts of rights are affected by the contribution limits: the right of the donor vicariously to speak through the candidate, and the right of like-minded donors to associate together to advance and promote one of their own.

The FECA contribution limits are limited in scope (at least when considered independently of the expenditure limits) since contributions are not forbidden entirely—as is the case with contributions by corporations and labor unions—but merely are limited in amount. Each individual can contribute as much as $25,000 per year; each individual can contribute as much as $2,000 per candidate per campaign, at the rate of $1,000 for the primary and

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[41] On three occasions this Court has declined to pass upon the constitutionality of the prohibition in 18 U.S.C. 610. See *Cort* v. *Ash*, No. 73-1908, decided June 17, 1975; *United States* v. *Congress of Industrial Organizations*, *supra*; *Pipefitters Local Union No. 562* v. *United States*, *supra*. Lower courts have upheld the ban on contributions by unions and corporations. *United States* v. *United States Brewers' Association*, 239 Fed. 163 (W.D. Pa.); *United States* v. *Painters Local Union No. 481*, 79 F. Supp. 516 (D. Conn.), reversed on other grounds, 172 F.2d 854 (C.A. 2); *United States* v. *Boyle*, 482 F.2d 755 (C.A.D.C.). Commentators have agreed that contribution limitations are constitutional in principle. *Developments in the Law—Elections*, 88 Harv. L. Rev. 1111, 1262-1265 (1975); Comment, *The Constitutionality of Restrictions on Individual Contributions to Candidates in Federal Elections*, 122 U. Pa. L. Rev. 1609 (1974). But see Redish, *Campaign Spending Laws and the First Amendment*, 46 N.Y.U. L. Rev. 900, 919-921 (1971); Comment, *The Constitutionality of the Federal Ban on Corporate and Union Campaign Contributions and Expenditures*, 42 U. Chi. L. Rev. 148 (1974).

$1,000 for the general election (18 U.S.C. 608(b)(5)). Moreover, individuals can contribute to "political committees," which in turn can contribute as much as $5,000 to a candidate; contributions from political committees are not counted against an individual's per-candidate contribution limits (18 U.S.C. 608(b)(1)).[42] In addition, each individual can contribute as much as $500 in incidental expenses connected with volunteer services, or a total of $1,000 per candidate (this limit, too, applies separately to the primary and the general election), and each individual may be able to contribute unlimited amounts to the campaigns of individuals who seek election as Electors of the Electoral College, whether or not those Electors are pledged to a candidate.[43] Individuals retain the right to speak for themselves to advance ideas or to advocate the election or defeat of any candidate, and the right to band together with third parties to advance ideas or advocate the election or defeat of any candidate.

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[42] If the contributions to a political committee are in any way "earmarked" for later contribution to a candidate, they do count against the individual's $1,000 limit. See 18 U.S.C. 608(b)(6).

[43] 18 U.S.C. 591(b) defines "candidate" as an individual who seeks nomination for or election to federal office. 18 U.S.C. 591(c) defines "Federal office" in a way that excludes candidates for Elector. It could be argued, however, that such contributions are indirect contributions to the candidate for President, and therefore subject to the $1,000 general election limitation.

The countervailing considerations in this regard are of course those previously discussed.

C. Problems Unique To The Limitations On Expenditures.

1. *General Considerations.*

The central question involved in expenditure limitations, which is quite different from that involved in contribution limitations, is whether a person can be prohibited from spending money to communicate an idea, belief, or call to action. This Court has dealt with similar questions in different contexts. See *Brandenburg* v. *Ohio*, *supra*; *New York Times Co.* v. *Sullivan*, *supra*; *Noerr*, *supra*; *Letter Carriers*, *supra*. In regard to expenditures and speech relative to candidates for public office, there is a unique set of justifications for what is otherwise a rather sweeping restriction of communications. The question confronting this Court may thus be whether the additional value of expenditure prohibitions, over and above the value of the other provisions of FECA, justifies such limitations.

This Court has never considered the constitutionality of controls on campaign expenditures, except by analogy; it has, many times (see, *e.g.*, *Mills* v. *Alabama*, *supra*; *Monitor Patriot Co.* v. *Roy*, *supra*), struck down restrictions upon speech during a campaign, and there may be no reason to suppose that cases like *Mills* and *Monitor Patriot* would have been decided differently had the State attempted to regu-

late only the cost of the political speech it found disquieting."

" In one of the earliest reported cases on expenditure controls (*State ex rel. LaFollette* v. *Kohler,* 200 Wis. 518, 228 N.W. 895) the Supreme Court of Wisconsin upheld an expenditure control law prohibiting a candidate from spending more than $4,000 in an attempt to secure the governorship. The court wrote (*id.* at 565):

> It is a matter of common knowledge that men of limited financial resources aspire to public office. It is equally well known that successful candidacy often requires them to put themselves under obligation to those who contribute financial support. * * * [T]hese obligations may be carried over so that they color and sometimes control official action. The evident purpose of the act is to free the candidate from the temptation to accept support on such terms and to place candidates * * * upon a basis of equality * * *.

The court noted, however, that independent expenditures in support of a candidate were permitted; citizens or groups could "upon their own initiative * * * support the candidacy of any person of their choice" (*id.* at 564), which would "be a support of principles rather than a personal claim upon a candidate's consideration should he be elected" (*id.* at 565).

More recent cases, however, have found expenditure controls to be constitutionally deficient. See *Deras* v. *Myers, supra* (Supreme Court of Oregon invalidating expenditure controls on both candidates and independent speakers); *Bare* v. *Gorton, supra* (Supreme Court of Washington invalidating similar expenditure controls); *Abercrombie* v. *Burns,* 377 F. Supp. 1400 (D. Hawaii) (limiting media expenditures by candidates is unconstitutional). Cf. *American Civil Liberties Union* v. *Jennings,* 366 F. Supp. 1041 (D.D.C.), vacated as moot *sub nom. Staats* v. *American Civil Liberties Union, Inc.,* No. 73-1413, decided June 23, 1975 (law requiring newspaper to obtain approval of candidate before accepting payment for political advertisement is unconstitutional).

2. Limitations upon the expenditures of "independent" speakers.

Perhaps the heart of FECA's expenditure controls is its restriction upon the expenditure of funds by *any person* (18 U.S.C. 608(e)) "relative to a clearly identified candidate during a calendar year * * * advocating the election or defeat of such candidate [and exceeding] $1,000." Without this restriction it would be a simple matter for candidates or other individuals to form "independent" committees in support of the candidate, and whatever benefit expenditure controls offer would be lost. The court of appeals concluded (J.S. App. 1530) that "the limitation on expenditures relative to a clearly identified candidate is a * * * means of closing a loophole that would otherwise destroy the effectiveness of" the expenditure restrictions. The question remains whether, if this expenditure control is necessary to close loopholes, it follows that it is therefore constitutional under the First Amendment.

In this regard, it may be important that FECA allows to each individual $1,000 worth of speech, so that communication is not entirely forbidden. Moreover, speakers unconnected with a specific candidacy can spend sums without limit upon discussion and dissemination of ideas and suggestions about public policy, though, in some cases, the effect may be to assist an issue candidate. The expenditure controls do not suppress ideas as such, but simply restrict the right of speakers to advocate the election or defeat of candidates who may or may not be supporters of the speaker's ideas.

While some forms of speech are thus permitted, other forms of speech—for or against candidates—are restricted. This may be justified if there is a compelling governmental interest in devising a more effective enforcement method of improving, detecting and reducing incentives to violate the contribution and disclosure provisions of FECA.

New York Times Co. v. *Sullivan*, *supra*, and *Monitor Patriot Co.* v. *Roy*, *supra*, indicate that one of the most important First Amendment values is speech *against* candidates for public office.[45] While FECA does not regulate a person's ability to say that politicians hold wrong ideas, or have abused their office, or are corrupt, if one names the politicians involved FECA's restrictions come into play. FECA's restrictions upon independent expenditures thus directly affect the right of the people to criticize their elected officials.[46]

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[45] Also, if there is a right to speak out against public officials, there would seem to be a concomitant right to speak out in favor of their opponents. See *Noerr*, *supra*, recognizing the right of groups to communicate in an attempt to elect candidates that they perceive will be favorable to their vested interests.

[46] Professor Emerson, a strong supporter of many of the types of regulation ultimately incorporated in FECA, observed (Emerson, *supra*, at 639-640):

> Funds expended for expression by the electorate at large do not generate [the] dangers [to which contribution and disclosure requirements are directed]. Hence a control narrowly limited to correct a grave abuse would not reach beyond restrictions upon the candidate himself, and would not be justified outside the election processes. * * * [R]egulations confined to candidates and election campaigns are directed to a limited end and deal with a limited situation. Hence they can be formulated with some objectivity and avoid the dangers of abuse in administration. This cannot be done with regulations, particularly equalization regulations, addressed to the innumerable different kinds of people seeking to express themselves for different purposes throughout the whole system of free expression.

3. *Expenditures by candidates.*

The court of appeals (J.S. App. 1537-1539) upheld the general restrictions upon candidate expenditures in Section 608(c) as necessary to achieve enforcement of the disclosure rules and contribution limitations, both by making violations easier to detect and by removing an incentive to collect excessively large contributions. It concluded that "given the power of money and its various uses, and abuses, in the context of campaigns, there is a compelling interest in its regulation notwithstanding incidental limitations on freedom of speech and political association" (J.S. App. 1538-1539). It may be, however, that restrictions upon money are more than "incidental" restrictions upon speech (see pp. 20-27, *supra*). Moreover, the court of appeals was acting upon the assumption that the restrictions upon independent expenditures are constitutional. The analysis of candidate expenditures changes if 18 U.S.C. 608(e) is unconstitutional. If Section 608(e) is stricken, "the ceiling [on candidate expenditures] could be wholly evaded by the establishment of 'independent' groups collecting and spending money on behalf of a candidate. A statute so easily avoided as to be a worthless

burden on political activity would be an unconstitutional as well as an unwise means of regulating elections" (*Developments in the Law—Elections*, *supra*, 88 Harv. L. Rev. at 1258; footnote omitted).

Section 608(c) limits the amount of speech. One governmental interest fostered by Section 608(c) is the need to make the contribution and disclosure provisions marginally more effective.[47] Whether that interest is sufficient is a difficult question. Support may be derived from *Letter Carriers*, for candidates are a self-selected group that can escape the expenditure limitations by entering other lines of work. But to pass constitutional muster, the interests supporting FECA must be deemed urgent enough to justify expanding the *Letter Carriers* rationale to the political process as a whole.

Judge Tamm, concurring in part and dissenting in part, observed (J.S. App. 1604) that the candidate expenditure limitations of Section 608(c) impinge upon the speech rights of contributors and potential contributors by diminishing their ability to make effective use of the contributions permitted by FECA. The court of appeals thought otherwise (J.S. App. 1539). It does appear, however, that the expenditure ceilings make nugatory any contributions that would enable the candidate to exceed the ceiling. Once the candidate has reached his expenditure ceiling, the rights of a contributor to associate himself with the

[47] Other interests have been advanced, and we have discussed these at pages 22-57, *supra*.

candidate's speech, or to express himself through the candidate, are terminated. If a candidate allowed to spend $70,000 (18 U.S.C. 608(c)(1)(E)) attracts twice that sum, the *effective* contribution limit of those who still wish to contribute becomes zero, and the effective contribution of those who already have contributed is only half of the sum each gave. This problem inheres in all candidate expenditure limits.

4. *The effects of the "safety valves".*

Section 608(a) allows candidates to spend personal funds, and the funds of their immediate families, in sums exceeding the $1,000 contribution and expenditure limits. It applies equally to all candidates, and its major effect is that it allows the well-to-do to retain some of the advantage of their greater wealth. While the contribution limits of FECA disable relatively poorer candidates from having access to wealthy patrons, requiring candidates to rely on their own resources for any large infusions of funds, this seems an even-handed disability since it treats people without regard to their wealth. Indeed, even candidates who can afford to expend $25,000 on their own behalf (18 U.S.C. 608(a)(1)(C)) could nevertheless benefit from contributions from wealthy patrons: such candidates, no less than candidates who cannot afford to spend on their own behalf, are simply remitted to their own resources. Moreover, as the court of appeals pointed out (J.S. App. 1531-1533), Section 608(a) prevents the wealthy from spending *more* than certain sums on their own behalf, and so

aids the less well-to-do; in addition, Section 608(a) allows the less well-to-do to gather funds from their immediate families, and so makes it possible to raise at least some "seed money." Of course, by allowing candidates to spend substantial sums of their own money, Section 608(a) does allow wealth to have substantial influence, although the aim of the contribution limits is to lessen such influence.

There are several other "safety valve" sections in FECA. Section 608(e)(2)(B) provides that any expenditures that labor unions or corporations are permitted to make under Section 610 (the Federal Corrupt Practices Act) are not "expenditures" for purposes of FECA. Section 610, as construed by this Court, permits corporations and unions to form "voluntary" political funds and spend whatever contributions they can attract. *Pipefitters* v. *United States*, *supra*. Accordingly, corporations and unions can accept and spend funds without limit supporting or advocating the defeat of candidates. As "political committees," such voluntary funds also can contribute $5,000 to any candidate.

Similarly, "issue" groups that take public positions on issues that may be highly important in an election, and on which a candidate's position may be well known, may make limitless expenditures even though those expenditures will be substantially beneficial or detrimental to candidates whose success the issue group wishes to promote or retard. Finally, those who own newspapers, periodicals or electronic media apparently (2 U.S.C. 431(e) and (f); 18 U.S.C. 591

(e) and (f); J.S. App. 1536-1537) can spend funds without limit to advocate the election or defeat of candidates in their pages or over the airwaves.[48] All of these provisions are perceived as "safety valves" designed to avoid First Amendment problems or upsetting settled practice.

In view of these "safety valve" provisions, it may be that money will retain much of its old power if it can be applied through corporation or labor union funds, or through "issue groups," rather than through the candidate himself. Inequality will remain, for there is no reason to suppose that corporate and labor funds, or "issue groups," will distribute their support any more equally than did those who donated directly to candidates. And, of course, the influence of such groups, no less than cash in hand, can be exchanged for a candidate's express or implied promises of support if elected. Public confidence may as a result continue to be shaken, whether or not candidates are improperly influenced by promises of support by corporations, unions, "issue" groups and the media. Ordinarily, these safety valve provisions would not affect a statute's constitutionality, for Congress is not required to deal with all aspects of a problem at once

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[48] The court of appeals (J.S. App. 1537) thought that this exemption showed that "Congress had no intention of controlling an independent press by this statute." However, there are controls upon independent expenditures (Section 608(e)), and under this Court's decisions the Constitution affords no greater protection to the press than to those who wish to expend their money to purchase space in it. *New York Times Co.* v. *Sullivan, supra; Bigelow* v. *Virginia, supra.*

and may decide which aspects to address when it does act. However, to the extent the safety valves undercut FECA's effectiveness they may affect the constitutional balance; the prospect of a statute's achieving its goals may affect the constitutionality of its restrictions on the freedom of speech.

5. *Is the expenditure ceiling too low?*

If the Court concludes that expenditure ceilings are constitutional in principle, and as structured by Section 608, then it would consider next whether the ceilings set are too low. We have set forth in the margin some considerations concerning whether the ceilings are relatively low.[49] The Court may evalu-

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[49] The FECA ceilings are of course considerably lower than what recent presidential candidates have raised and spent. Relative to congressional races, the ceilings are higher than the expenditures of most recent campaigns, but considerably lower than the costs of recent campaigns in larger States.

A candidate for President can expend $20 million in the general election, or less than 10 cents per citizen; a candidate for the Senate can expend the greater of 12 cents per member of the voting age population or $150,000; a candidate for the House in a state with more than one Representative can expend $70,000 (18 U.S.C. 608(c)(1)). A presidential candidate could expend his entire budget by purchasing only 200 minutes of prime time on television at $100,000 per minute (divided over three networks, that would be less than two hours of viewing time per network). A candidate for Senator would exhaust his budget by mailing a single first class letter to each potential voter (and, of course, once postal rates reach 13 cents per ounce, he could not even pay the postage, let alone the stationery, stuffing, and address list costs). Presidential candidates routinely would be outspent by innumerable

ate these in terms of whether it was necessary for Congress to set these ceilings or whether higher ceilings would suffice.

III. DISCLOSURE OF CONTRIBUTIONS.

A. General Principles.

1. *Introduction.*

Disclosure enables citizens to decide whether to vote for a candidate in light of the candidate's sources of financial support and, if the public knows who has given financial support to a candidate, this may deter improper contributions and the exertion of undue influence by supporters who can achieve their ends only so long as their ties to a candidate are beyond the public ken. See *Grosjean v. American Press Co., supra,* 297 U.S. at 250.

Disclosure also affects speech and associational rights. When the candidate's position is unpopular or his party affiliation such that some of his supporters might be held up to ridicule or suffer adverse consequences (such as loss of employment) if their support were known, public disclosure may deter many individuals, the brave and the timid alike, from associating with others to support their common cause.

Even when there is no possibility of reprisal because of one's beliefs and associations, public disclo-

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commercial advertisers (II A. 7-9). And an independent citizen would not be able to afford even a quarter of a page of a major daily newspaper to speak his piece on a candidate for public office (II A. 32).

sure may have an important effect. Many individuals, because of the nature of their employment or position, must lead "public" lives that are nonpartisan. This was the basis for the decisions in *Letter Carriers, supra,* and *Broadrick* v. *Oklahoma, supra.* Civil servants should not have public political identities; many others must maintain a discreet public neutrality, and consequently must express their beliefs in private or not at all. Association with other politically like-minded men and women may offer these people what is, perhaps, their only avenue of political participation other than the vote itself. For such persons, public disclosure of their contributions might have the same effect as public disclosure of the party for which they cast their vote.

The court of appeals therefore concluded that disclosure provisions must be subjected to searching scrutiny, and can be justified only by the most pressing needs. The court of appeals declared unconstitutional 2 U.S.C. 437a (J.S. App. 1549-1560), which requires disclosure of the membership lists of organizations that engage in political speech, and the Commission has not appealed that judgment. The court, however, believed that suitably limited disclosure can be a tool of such value that the benefits it can provide are more than adequate to survive that scrutiny. The question presented here, therefore, is whether the disclosure requirements of FECA are suitably limited.

Before turning to an analysis of the specific provisions of FECA, we discuss the principles developed

in the many opinions of this Court that have addressed one form or another of disclosure requirements.

2. Constitutional balancing principles used in disclosure cases.

This Court first upheld a significant disclosure requirement in *Burroughs and Cannon* v. *United States,* 290 U.S. 534, which involved a provision of the Federal Corrupt Practices Act of 1925, 43 Stat. 1070, requiring the treasurer of every political committee to file certain financial reports with the clerk of the House of Representatives. However, the Court did not address the First Amendment because no First Amendment challenge was raised.[50]

United States v. *Harriss,* 347 U.S. 612, involved the validity of the Federal Regulation of Lobbying Act's requirements that all those receiving or expending money for the purpose of influencing pending legislation make detailed reports on their clients and finances. The Court sustained the Act against a First Amendment challenge, holding that the Act properly maintained governmental integrity by giving legislators information needed to evaluate the

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[50] See also *United States* v. *Wurzbach,* 280 U.S. 396, in which the Court upheld another portion of the Federal Corrupt Practices Act against claims of excessive vagueness, concluding that "[i]t hardly needs argument to show that Congress may provide that its officers and employees neither shall exercise nor be subjected to pressure for money for political purposes, upon or by others of their kind, while they retain their office or employment."

source of pressure from lobbyists, and that the restraint upon persons not covered and seeking only incidentally to influence legislation was "indirect," if not hypothetical.

Relying upon *Burroughs and Cannon* and *Harriss*, the court of appeals (J.S. App. 1541-1545) joined *Stoner* v. *Fortson*, 379 F. Supp. 704 (N.D. Ga.) (three-judge court), and *United States* v. *Finance Committee to Re-Elect the President*, 507 F.2d 1194 (C.A.D.C.), in upholding the major provisions of the disclosure requirement and its application to all contributions exceeding $100.[51]

Harriss, however, dealt with a very narrow statute, which was directed not to the public at large but only to lobbyists attempting to influence pending legislation. The Court there did not have occasion to deal with the First Amendment considerations involved when many people, seeking to make their views generally known in order that others may be persuaded, pool their resources, which alone could not accomplish this aim. In regard to that situation, the Court has held that "freedom to associate with others for the common advancement of political beliefs and ideas is a form of 'orderly group activity' protected by the First and Fourteenth Amendments. * * * The

[51] Cf. *Buettell* v. *Walker*, 59 Ill. 2d 146, 319 N.E. 2d 502, upholding a State executive order compelling all those who do business with the State to disclose all contributions made to elected and appointed officials, and to their campaigns. The court held that the order was narrowly drafted to reach only those who might realistically exert influence over public officials.

right to associate with the political party of one's choice is an integral part of this basic constitutional freedom." *Kusper* v. *Pontikes*, 414 U.S. 51, 56-57.[52] The Court concluded in *Kusper* (414 U.S. at 58): "a significant encroachment upon associational freedom cannot be justified upon a mere showing of a legitimate state interest."

That a disclosure law might infringe to an intolerable degree the freedom of speech and association can scarcely be doubted. In *Talley* v. *California*, 362 U.S. 60, the Court held unconstitutional a city ordinance prohibiting the distribution of handbills unless the handbill displayed the name and address of its author. The requirement of identification "would tend to restrict freedom to distribute information and thereby freedom of expression" (362 U.S. at 64). Because retaliation is more easily ac-

[52] The Court repeated the same theme in *Communist Party of Indiana* v. *Whitcomb*, 414 U.S. 441, noting that, although states undoubtedly have great power to regulate the conduct of their elections, they cannot use their power in a manner that burdens the right of speech or association of political parties. See also *Cousins* v. *Wigoda*, 419 U.S. 477. In *Cousins* the National Democratic Party had unseated and replaced delegates to its convention who had been properly elected under state law. The state courts enjoined the unseating and replacement, reasoning that the State had a compelling interest in protecting the "integrity of its electoral processes" (*id.* at 489). The Court agreed that there was such an interest, but held that it was insufficient to permit the State to interfere with the freedom of association of the delegates because (*id.* at 487-488): "Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents."

complished against a known speaker,[53] "identification and fear of reprisal might deter perfectly peaceful discussions of public matters of importance" (*id.* at 65).

If the deterrence of speech by such disclosure may sometimes violate the First Amendment, the deterrence of association may do so as well. In *N.A.A.C.P.* v. *Alabama ex rel. Patterson*, 357 U.S. 449, the State had demanded that the N.A.A.C.P. turn over the names of its members in order to qualify to do business as a foreign corporation. The Court struck the requirement down, concluding that it would work a significant interference with the freedom of association and that the State had not shown any sufficient countervailing interest, particularly since it was far from clear that disclosure would have a substantial bearing on whether the organization had complied with the registration law. "It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [direct prohibitions]. This Court has recognized the vital relationship between freedom to associate and privacy in one's associations. * * * Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of asso-

[53] "Persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all" (362 U.S. at 64).

ciation, particularly where a group espouses dissident beliefs" (357 U.S. at 462). See also *Bates* v. *Little Rock*, 361 U.S. 516; *Gibson* v. *Florida Legislative Investigation Committee*, 372 U.S. 539; *Sweezy* v. *New Hampshire*, 354 U.S. 234, 250-255.

Perhaps the first law to be held unconstitutional because of its requirement of disclosure was the requirement in *Thomas* v. *Collins*, *supra*, that union organizers register with a state agency and obtain an organizers' card. The State's justifications were that it desired to protect workers from entreaties by organizers who were receiving support from unknown sources and who might be disguised agents of unpleasant principals. The Court wrote (323 U.S. at 540):

> We think a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment.
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> Once the speaker goes further, however, and engages in conduct which amounts to more than the right of free discussicn comprehends, as when he undertakes the collection of funds or securing subscriptions, he enter a realm where a reasonable registration or identification requirement may be imposed.

So it would have been permissible for the State to require the organizer to identify himself when money changed hands. Would it have been permissible to require the donors to identify themselves as well?

This is a serious constitutional question.[54] The Court intimated no answer.[55]

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[54] See *United States* v. *Rumely*, 345 U.S. 41, in which the House Select Committee on Lobbying Activities desired to secure the names of all those who purchased more than $1,000 worth of any individual book published by Rumely. Rumely's books were political in nature, and the Committee reasoned that the names of the purchasers would help it to discover those who might be engaged in certain forms of lobbying. It cited Rumely for contempt of Congress when he declined to disclose the names. The Court declined to enforce the citation, narrowly construing the Committee's grant of authority in order to avoid what it perceived to be constitutional problems of the first magnitude. Cf. *Lamont* v. *Postmaster General*, 381 U.S. 301.

[55] A number of lower federal courts, attempting to harmonize *Harriss* with cases such as *Talley* and *N.A.A.C.P.* v. *Alabama*, have held disclosure requirements of various sorts unconstitutional. For example, *Pollard* v. *Roberts*, 283 F. Supp. 248 (E.D. Ark.) (three-judge court), in which Mr. Justice Blackmun participated as a Circuit Judge, invalidated an Arkansas statute that allowed a prosecuting attorney to subpoena financial records of the Republican Party for an investigation into vote-buying allegations. The court observed that the Republican Party was a minority party in Arkansas and that such investigations would inhibit the willingness of adherents to contribute; it recognized that the impetus for the investigation was legitimate, but concluded that a legitimate reason is not enough. It held that the Party's records of contributors could not be obtained unless necessary to confirm specific information that a specific contribution had been used for illegitimate purposes. The State appealed, and this Court summarily affirmed. 393 U.S. 14.

Lewis v. *Baxley*, 368 F. Supp. 768 (M.D. Ala.) (three-judge court), involved a disclosure statute similar to that of *Harriss* but directed to newsmen instead of lobbyists. The district court held that the disclosure would create an excessive inhibitory effect, and that the interest of the public and the legislators in discovering bias or financial interest in reportage of legislative affairs was not sufficiently compelling to

One thing, however, is certain: the apparently heavy burden of demonstrating the constitutionality of a law compelling disclosure of the identities of those who adhere to a particular political position can be met in some circumstances. When, as in *United States* v. *Harriss*, *supra*, nondisclosure may lead to bribery and political influence by lobbyists not subject to the test of the marketplace of ideas, a law compelling disclosure is both necessary and appro-

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justify the chill involved. And in *Printing Industries of the Gulf Coast* v. *Hill*, 382 F. Supp. 801 (S.D. Tex.) (three-judge court), remanded for consideration of possible mootness, No. 74-456, decided June 30, 1975, the district court held unconstitutional a statute requiring all political advertising to bear the name and address of both the printer and the person or group paying for the advertisement; the court held that even the compelling state interests of prevention of fraud and provision of information to the voter are not sufficient to justify the extinguishment of anonymous political speech. Cf. *Zwickler* v. *Koota*, 290 F. Supp. 244 (E.D. N.Y.), vacated as moot *sub nom. Golden* v. *Zwickler*, 394 U.S. 103 (statute forbidding anonymous campaign literature is unconstitutional); *People* v. *Duryea*, 44 A.D.2d 663, 354 N.Y.S. 2d 129, affirming 76 Misc. 2d 948, 351 N.Y.S. 2d 978 (New York law forbidding anonymous political publications is unconstitutional even as to candidate who uses anonymity as a shield for fraud); *United States* v. *Insco*, 496 F.2d 204 (C.A. 5) (construes antifraud statute to avoid constitutional question presented by prohibition of anonymity); *City of Carmel-by-the-Sea* v. *Young*, 2 Cal.3d 259, 85 Cal. Rptr. 1, 466 P.2d 225 (statute requiring public officials to disclose their personal investments exceeding $10,000 is unconstitutional). See also Emerson, *supra*, at 645 ("It will be a rare situation * * * when a disclosure requirement enhances the system of freedom of expression, rather than doing it serious damage").

priate.[56] Disclosure may similarly be appropriate when it supplies information needed to evaluate the fitness of an individual for a particular office. The questions in each case are whether the scope of the disclosure is necessary to achieve the legislative aim, and whether that aim is sufficient to justify the effect of disclosure on the freedom of speech and association. Cf. *Branzburg* v. *Hayes*, 408 U.S. 665, 700. FECA must be tested under these standards.

B. The Threshold For Disclosure—Is $100 Too Low?

Only contributions between $100 and $1,000 are subject to disclosure under FECA; contributions larger than $1,000 are forbidden entirely. The importance of requiring a candidate to reveal the names of all contributors whose support is such that it could significantly influence the candidate's performance in office, if elected, cannot be doubted. The court of appeals pointed to examples of the influence of contributions upon performance in office, of the "sale" of ambassadorships, and of the alteration of public policy in an effort to secure large contributions (J.S. App. 1515-1516).

The question here, however, is whether the contributions subject to disclosure could produce such evils. In this regard the court of appeals did not find that

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[56] "Because lobbyists are nothing more than spokesmen for the interests they represent, Congressmen have a stronger interest in knowing who sponsors lobbyists than voters have in knowing who has contributed to a candidate's campaign." *Developments in the Law—Elections, supra,* 88 Harv. L. Rev. at 1246.

individual contributions of $100 could influence a candidate's performance in office. Instead, it thought that the $100 disclosure threshold was proper because the limit had to be low enough to detect patterns of giving; that is, numerous individuals similarly situated could contribute sums that might have an effect upon the candidate, even if none of the individual contributions had such an effect.[57] For example, if every member of an agricultural cooperative donated $100 to the campaign of a candidate for the House, the total contribution would be quite large; such information could be useful to the electorate in its choice and the pattern of giving could have an effect upon the candidate's performance in office. Perhaps the precise issue, then, is not whether, under the First Amendment, $100 is too low a threshold for individual contributions, but whether it is too low when the possibility of aggregation is taken into account.

That is a difficult question to analyze, for one would have to estimate not only how often such patterns would occur if the threshold were higher, but also how prevalent such patterns will be with a $100

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[57] A pattern of repeated giving by a single individual could be detected and revealed by requiring political committees and candidates to keep detailed records of each contribution and to reveal the contribution *total*, but only when the total exceeded the sum judged to be capable of influencing the candidate's performance; FECA now makes similar provision for the recording of all contributions of $10 or more, and for public disclosure only when the total reaches $100 (see 2 U.S.C. 432(c) and (c)(2); 2 U.S.C. 434(b)(2)).

threshold. It is a question upon which we simply lack sufficient information to form an opinion.

We close this portion of the discussion by pointing out that under FECA the disclosure threshold is the same for all candidates for all offices. A contribution of $100—or even a pattern of repeated contributions of $100—will have less potential effect in a presidential campaign (with an expenditure ceiling of $20 million) than in a House campaign (with an expenditure ceiling of $70,000). The public interest in knowing the name, address and occupation of the contributor may correspondingly be much less in the case of the presidential campaign, while the inhibitory effect caused by disclosure is likely to be greater in the presidential campaign if the lists of contributions will be more widely circulated and inspected by more people.[58]

[58] As an alternative, Congress could have relied upon a dual trigger: the contribution, in order to be disclosed, must be high both in absolute amount and in proportion to the candidate's total budget. For example, a law might provide that contributions would be disclosed only if they exceeded some absolute figure and exceeded one half of one percent of the campaign budget. For a presidential campaign conducted under the the FECA ceilings, that standard would require disclosure of contributions exceeding $10,000. Because individual contributions cannot exceed $1,000, this rule would come into play only when a pattern of giving by similarly-interested individuals produced an aggregate contribution exceeding $10,000 (that is, if 10 or more similarly-interested individuals contributed $1,000 each).

C. Special Applications.

1. *Disclosure by minor and unpopular parties.*

The application of disclosure requirements to small or dissident parties raises other considerations since candidates from such parties are rarely if ever victorious, and at the same time (and for the same reasons they are unlikely to attract a plurality of the votes) the views they espouse are much more likely to be unpopular.[59] Chief Judge Bazelon stated that contributors to unpopular causes are most susceptible to the inhibitory effects of disclosure, for "to be publicly labeled, *e.g.*, Socialist, Communist, or Nazi is to invite social ostracism, loss of business or employment, verbal or physical abuse, or worse" (J.S. App. 1594, dissenting in part); he therefore concluded that under decisions of this Court such as *Talley* and *N.A.A.C.P.* v. *Alabama* the disclosure provisions cannot constitutionally be applied to small or dissident parties.

The court of appeals recognized that contributions to minor parties would be deterred (J.S. App. 1547) and that, "[s]o far as unpopular minor parties are concerned, disclosure does indeed infringe their First Amendment freedom to associate to advocate unorthodoxy" (J.S. App. 1548). It nevertheless upheld the application of the disclosure requirements to

[59] Small and unpopular parties are required to make disclosure on the same basis as other parties; small parties are denied public funds under Subtitle H on the ground that they are unlikely to prevail.

minor parties, upon three grounds: that there is only "scant" evidence (*id.* at 1546) tending to show a "chilling effect"; that contributions of less than $100 will not be deterred (*id.* at 1546, n. 116; 1547, n. 119); and that minor parties otherwise could be used as "stalking horses" by major parties (*id.* at 1547-1548).

Neither the position of Chief Judge Bazelon nor the analysis of the majority is decisive. Because the adherents of minor parties will not be elected, there is no possibility that candidates will acquire money in exchange for an express or implied promise of favors while in office. Potential contributors do not feel compelled to give in order to minimize the chance that the successful candidate will penalize noncontributors. Minor parties do not attain "unfair" advantages by outspending their opponents; the reverse may be true. On the other hand, although in many areas an individual might not be subject to harassment if his neighbors or his employer learns that he supports the Democrats or Republicans, the results could be different if his neighbors (or employer) learn that he supports the Progressive Labor Party, the Socialist Workers Party, the Nazi Party, or even the Libertarian Party or the N.A.A.C.P. The court of appeals pointed out that there is only scant evidence of a chilling effect on minor party contributors, while Chief Judge Bazelon thought that the relationship between anonymity and contribution rates would be impossible to establish (J.S. App. 1595).

We do not seek to resolve this dispute, but we do note the inherent difficulty of defining with any degree of certainty what is meant by a "minor" party whose contributors would be subject to harassment if their names were disclosed. The situations may vary from one section of the country to another, from one "minority" party to another, from one time to another. Indeed, in Arkansas in 1968 the Republican Party might have fit that description; at least the three-judge court in *Pollard* v. *Roberts*, *supra*, so held. The difficulty in drawing a meaningful distinction may therefore suggest that the disclosure requirements must be upheld as applied to all parties or struck down in their entirety.

2. Disclosure by other unsuccessful candidates.

Candidates of minor parties are a subset of the class of all "unsuccessful" candidates—those who do not (and who often have no prospect to) receive a plurality of the vote in either the primary or the general election. Candidates who had a chance to win, but who happened to lose, can present (although certainly less urgently) the problems presented by requiring disclosure by unpopular candidates of minor parties. Candidates who lose cannot, by definition, exchange official favors for the contributions they have received. And the donation of large sums of money by selfish interest groups may well be deterred simply by the prospect that, if a candidate prevails, he will have to make a full accounting of the sources of his support. Also, the contributor to

a losing candidate could face the possibility of retribution by the winner. If the supporters of the losers are made known, some people may be less likely to support "underdog" candidates.

But requiring disclosure only of the winners' contributors would mean that disclosure must follow the election rather than precede it.[60] If disclosure did not occur until after the election, voters would be less informed about the supporters of the candidates and would be denied one of the important benefits of disclosure.

3. ***Disclosure before primary elections.***

Many more candidates are involved in primaries than are involved in the general election. The considerations regarding the constitutionality of requiring all general election candidates to disclose their contributors prior to the general election may not carry over with as much force to pre-voting disclosure in primaries. The primary winners (and their pre-primary contributions) will be subjected to full voter scrutiny before they have an opportunity to be elected. If disclosure of contributors to primary candidates occurred only after the primary and only in regard to the winners, the voters could nevertheless

[60] Some candidates, of course, might disclose their contributions voluntarily, knowing that, if they won, they would have to do so eventually; voters might view with some suspicion candidates who insisted upon waiting until after the election. If substantial numbers of candidates came forward with pre-election disclosure, that would achieve the same result as the present law.

cast their ballots in the general election with full knowledge of the identity of the candidate's supporters at every stage of his campaign. However, they would be denied that information prior to the primary. At the same time, if the contribution lists of the losers are not required to be disclosed, this would diminish the adverse effect on freedom of expression and association.

IV. PUBLIC FINANCING OF CANDIDATES FOR PRESIDENT.

When proposals for public financing of campaigns for election were under consideration by Congress in 1967, Majority Leader Mansfield remarked that the questions involved in public financing are "questions which go to the very heart and structure of the Government of the Republic" (113 Cong. Rec. 12165 (1967)). We doubt that any party to this case will take issue with that statement; the issues involved here are of indisputable moment. The provisions in the Act providing matching funds for candidates for nomination for president, and complete federal financing of the presidential campaigns of the "major" parties, will produce a dramatic change in American political life. FECA affects the role of the party in campaigns for office, changes the role of the incumbent government vis-a-vis all parties, and affects the relative strengths and strategies of candidates vis-a-vis each other and their party's leaders.

The financing provisions of the Act, by eliminating private funds from any role in the general elec-

tion campaign, may produce profound effects in the way candidates approach issues and each other. On the one hand, candidates may feel more free to discuss issues and take stands that previously might have offended major contributors. On the other hand, many contributors have been vigorous supporters of candidates who took particular stands; the fund-raising successes of Senators Goldwater and McGovern, and of Governor Wallace, bear strong testimony to the influx of money that will follow strong stands responsive to important segments of popular opinion. It may be that, with the possibility of such rewards removed by the Act, many candidates will feel less inclined than presently to take clear positions on important and divisive issues. These overarching issues pose questions to which we know no answers; we limit our discussion here to the question of congressional power to provide public funds to private parties, and the considerations pertinent to FECA's different treatment of smaller parties.

A. Sources Of And Limitations On Congressional Power.

Article I, Section 8, clause 1 of the Constitution contains a broad grant of power to tax and spend for the general welfare. As this Court has emphasized (*United States* v. *Butler*, 297 U.S. 1, 66), the grant of power to Congress is plenary, subject only to constraints found in other provisions of the Constitution. Congress is the sole judge of whether a spending measure promotes the general welfare for purposes of Article I, Section 8, clause 1, and

it is not open to the courts to reconsider whether the statute is wise.[61]

Tax dollars "checked off" and designated for the campaign fund may not be voluntary contributions: the taxpayers' taxes are the same whether or not they make a designation and they cannot designate any particular party or candidate as a recipient. Nevertheless, if Congress has the power to subsidize campaigns out of the general treasury then the "non-voluntary" nature of the contribution is of no significance.

If there is any bar to the principle of public financing of political campaigns, it would have to come not from the taxation and spending clause but from the First Amendment. Cf. Mr. Justice Black, dissenting in *International Association of Machinists* v. *Street*, 367 U.S. 740, 788. Majoritarian democracy depends, however, upon the conscription of other people's money; those who are outvoted are taxed to support projects and programs they disapprove, and it is no answer to invoke the First Amendment as a bar to levies of this sort. It is difficult to find a principled distinction between levying a tax for the purpose of running a "model cities program" or building a submarine that 49 percent of the people

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[61] If that concern were relevant to this portion of the argument, however, it would be answered by the fact that public financing, at least in principle, promotes the public welfare by enabling candidates to communicate more effectively (see pages 51-58, *supra*), by providing money to enable a candidate to solicit small contributions more effectively, and by reducing the incentive to accept or become dependent upon large contributions (see pages 31-37, *supra*).

oppose, and levying a tax for the purpose of enabling people to discuss (without government direction or control of the content of the discussion) the "model cities program" and submarine that some people would oppose. Indeed, if any distinction could be drawn, the distinction should favor expending public funds to support speech, for under the Constitution speech is a premium good, to be assiduously fostered.

B. Excessive Entanglement: The Analogy To Church And State.

The feature of federal financing of political campaigns that is most apparent, and least subject to dispute, is that federal money is accompanied by federal involvement. Federal financing leads, in some cases, to some degree of federal control. FECA provides for careful auditing in order to ensure that the dollars provided from the Treasury will be used only for allowable purposes.

When public financing of political parties was introduced in the Federal Republic of Germany, the Constitutional Court struck it down, in large part because (especially in light of that country's recent experience with an all-too-close relationship between the party and the state) public financing promoted excessive entanglement between the state and what were supposed to be competing private groups. See Casper, *Williams v. Rhodes and Public Financing of Political Parties Under the American and German Constitutions*, 1969 Sup. Ct. Rev. 271, 296.[62]

[62] The German Constitutional Court later reversed itself when confronted with a different law, although it struck down rules that disallowed financing to the smaller parties.

Of course, in the United States, unlike the case in Germany, political parties have not been established or recognized by the Constitution itself. It is therefore not possible to make an "establishment clause" argument in the same sense that one could make an "establishment clause" argument if the federal government were directly to provide financing only to "major" religions. On the other hand, established parties are supported by FECA to the exclusion of new or struggling parties, thereby further "establishing" such groups. FECA might be thought to create the potential for "established" groups to drown out their competitors; the "established" groups may be obnoxious to adherents to other philosophies; the "established" groups may, in time, become entangled with their patron, and either modify, or be forced to modify, the philosophy that originally drew them together. Cf. *Speiser* v. *Randall*, 357 U.S. 513.

In evaluating this potential the Court, of course, must determine how likely these events are and whether, if they did occur, a judicial remedy at that time would offer a solution.

C. Discrimination Against Small Parties.

This Court has held on numerous occasions that state laws affording established parties automatic access to the ballot, while hindering the access of small parties, can be upheld only if the difference is justified by a compelling state interest. See, *e.g.*, *Lubin* v. *Panish*, *supra*; *American Party of Texas*

v. *White*, 415 U.S. 767. Although there are many legitimate governmental interests involved in the political process, some of them compelling, the government must pursue its legitimate interests "by a means that does not unfairly or unnecessarily burden either a minority party's or an individual candidate's equally important interest in the continued availability of political opportunity" (*Lubin* v. *Panish*, *supra*, 415 U.S. at 716). The court of appeals correctly recognized that "provisions for public funding of Presidential campaigns, like provisions regulating access to the ballot, could operate to give an unfair advantage to established parties, thus reducing, to the nation's detriment, * * * the 'potential fluidity of American political life.' *Jenness* v. *Fortson*, 403 U.S. 431, 439 (1971)" (J.S. App. 1562). Although the court of appeals held that FECA is not unconstitutionally discriminatory, Judges Tamm and Wilkey disagreed (J.S. App. 1604-1607).

The Act divides parties into three classes: "major", "minor", and "new". New parties are not entitled to any funds unless they gather more than five percent of the votes in an election, in which event funds are provided *after* the election. Minor parties receive funding based upon their success at the previous election, and the funds provided may be augmented after the election should the minor party be more successful than it was previously. Major parties (all parties gathering more than 25 percent of the vote), by contrast, are treated alike, even though they may be quite different in percentage of the vote gathered. They receive $20 million *prior* to the election.

Three sorts of discrimination might be thought to arise out of this scheme: minor and new parties (and especially those parties formed since the last election) are relatively disadvantaged in comparison to major parties; the distinction between minor parties (which are entitled to proportional funding) and new parties (which get none until after an election) may be defective; and minor and new parties may be caught between the inadequacy of their funding and the limit on contributions.

No one questions that Congress has the power to limit the class of candidates to whom it will furnish financial support; it is important to be sure that the candidates are serious or bona fide before allowing them access to public funds, just as a State can condition ballot access upon a reasonable demonstration of popular support. Congress has an interest—indeed, a compelling interest—in requiring parties and candidates to demonstrate support before throwing open the public coffers. Cf. *Bullock* v. *Carter*, 405 U.S. 134, 145. In recent and analogous cases, the Court has held that States may impose qualification requirements for access to the ballot, and that these requirements upon occasion serve a compelling state interest. See, *e.g.*, *Lubin* v. *Panish*, *supra*; *Storer* v. *Brown*, *supra*; *American Party of Texas* v. *White*, *supra*; *Jenness* v. *Fortson*, 403 U.S. 431. Although under these cases reasonable and necessary qualifications standards are permissible, the qualifica-

tion standards cannot discriminate against smaller parties and cannot unjustifiably inhibit ballot access.

The financing provisions of the Act, when combined with the contribution limits, may seem to place smaller parties at a considerable disadvantage. Parties that have not in the past obtained five percent of the vote receive no funds at all; their opponents in the same election may be generously supported by public funds. Unlike the case in *Storer* and *American Party*, the Act provides no alternative methods of qualification that give smaller parties a realistic opportunity of effective participation (in pre-election funding). No quantity of signiatures on petions, no objective showing of support, will enable a small party to claim any share of the public funding until after the election. Lack of alternative means of access to the ballot was condemned in *Lubin*, and the availability of alternatives relied upon in *Storer* and *American Party*. The issue is whether the lack of alternative means for a small party to demonstrate its popular appeal prior to the election is constitutionally defective here.

Candidates in presidential primaries—like minor and new parties in the general election—may have no track record in previous primaries, or (because those primaries occurred four years previously) the track record may not reflect current support. Congress provided for a program of matching funds. Public support is closely linked to the candidate's ability to procure private support, subject to a "trigger" device designed to ensure that the candidate has enough support to be serious. See 26 U.S.C. 9033.

Could this or some similar device—which would obviate some of the claims of discrimination against small parties—be used for general elections as well? [63] The court of appeals found it an "eligible alternative," but thought it "cumbersome" (J.S. App. 1564). Cf. *Lubin* v. *Panish*, *supra*, 415 U.S. at 718.

In considering the lack of alternative means of qualifying for pre-election funds, the Court should take into account that FECA's contribution limits apply to major, minor and new parties, which to some extent limits the ability of new and minor parties to compete by raising funds from large contributors.[64]

Although it should be apparent that Congress can demand some showing of substantial support before providing public funds, another question arises—whether five percent of the actual vote, which new parties must gather to be eligible, is excessive. It

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[63] As the court of appeals stated, other trigger devices—such as opinion polls and petition signatures—probably are not feasible. See J.S. App. 1563-1564.

[64] If the contribution limits are themselves unconstitutional, this point would not apply.

In addition, the Court might consider the argument that the position of smaller parties is relatively improved vis-a-vis major parties because, although smaller parties must continue to raise funds privately, the major parties cannot spend in excess of $20 million, so that the ratio of small party expenditures to major party expenditures will increase. However, this argument would fail if the expenditure ceiling is unconstitutional. Moreover, because major parties are relieved from the onerous burden of fund raising, they may gain in other advantages whatever benefits they lose in relative financial power.

is not entirely accurate to analogize the minimum showing of support necessary to receive public funds, on the one hand, to the showing of support necessary to be placed on the ballot, on the other. A candidate, once on the ballot, has some chance of prevailing even if not entitled to public funds. And in *Jenness* v. *Fortson*, *supra*, the Court upheld a ballot qualification law compelling a potential candidate to obtain the signatures of five percent of the electorate.

In *Storer*, *supra*, the Court was again confronted with a five percent qualification rule, but in *Storer*, unlike in *Jenness*, the five percent was required to be obtained from among those who had not voted for other candidates. As between *Jenness* and *Storer*, FECA appears to fall on the *Storer* side: because each voter casting a ballot in a presidential election can vote but once, the candidate of a smaller party must obtain his five percent from among those who have declined to vote for the candidate of a major party. Cf. *American Party*, *supra*, 415 U.S. at 782-784.

It is, of course, for Congress to decide what to adopt as a compromise among the interests of the major and minor parties, taking into account the need for reasonable administrative feasibility and the interest in protecting the Treasury against raids by candidates without prospect of success. If more than one solution is constitutionally acceptable, the choice of Congress must be respected. The degree of deference due to Congress in this regard may well be

decisive when the Court evaluates the constitutionality of these FECA provisions.

V. THE SCOPE OF THE COMMISSION'S POWER.[65]

The Federal Election Commission is composed of six voting members (2 U.S.C. 437c). Two members are appointed by the President, two by the Speaker of the House (upon recommendations of the Majority Leader and Minority Leader), and two by the President Pro Tempore of the Senate (upon recommendations of the Majority Leader and Minority Leader). All six voting members, who serve staggered six-year terms, must be confirmed by majority vote of both Houses of Congress.

The Commission has been given broad powers to administer the provisions of FECA. It has the power to conduct investigations and make findings of fact; it can subpoena information it deems necessary for that purpose (2 U.S.C. 437d(a)(1) through (5), (11)). The Commission has the power to formulate and promulgate rules, pursuant to the provisions of the Administrative Procedure Act (2 U.S.C. 437d (a)(8) and (9); 2 U.S.C. 438). It can render advisory opinions, and any person who acts in accordance therewith "shall be presumed to be in compliance with" the provisions of FECA (2 U.S.C. 437d (a)(7), 437f). It has discretion to audit the records of candidates or political committees in order to detect violations of FECA or simply to gather informa-

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[65] The Attorney General joins in this section of this brief as a party. See out Statement of Interest at page 2, *supra*.

tion (2 U.S.C. 438(a)(8)). And, when necessary, the Commission can make exceptions to certain of FECA's substantive provisions (see, *e.g.*, 26 U.S.C. 9008(d)(3)).

The Commission also possesses apparently broad powers to seek enforcement of the provisions of FECA and to penalize those who do not comply with its provisions. The Commission can, in its own right, impose sanctions; a candidate who fails to file required reports can be disqualified for a period of one year from seeking office (2 U.S.C. 456). The Commission's powers do not stop with entering administrative penalties that are judicially reviewable, for the Commission also is authorized to seek judicial relief for violations of FECA. It can receive complaints (2 U.S.C. 437g(a)), and, after investigation, institute civil proceedings in its own name or on behalf of the United States, seeking injunctive or other civil relief (2 U.S.C. 437d(a)(6), 437g(a)(5); 26 U.S.C. 9010, 9011(b)(1), 9040). "The Commission has primary jurisdiction with respect to the civil enforcement" (2 U.S.C. 437c(b)) of many parts of FECA. Instead of bringing its own civil action, the Commission can direct the Attorney General, who "shall" comply, to bring a civil action (2 U.S.C. 437 g(a)(7)). Only when criminal prosecution is contemplated does the Commission's enforcement power cease (2 U.S.C. 437g(a)(6)); the Attorney General has authority to prosecute criminal cases.

Although the Commission therefore appears to possess both substantial administrative authority and

plenary civil enforcement authority, much of its activity is under the direct control of the Congress. Two Officers of Congress are *ex officio* members. Not only are four of its six voting members appointed by Congress, but also all rules proposed to be made by the Commission must be submitted to Congress (2 U.S.C. 438(c)), which can "veto" the rules if either chamber disapproves them within thirty legislative days of transmission. The Commission also must submit all of its proposed budgets and drafts of proposed legislation to Congress before submitting them to any other federal agency or person in the executive branch.

In sum, the Commission is dominated by Congress—so much so that we thing it fair to say that it is an arm of Congress, or a legislative agency, in much the same manner that the General Accounting Office is a legislative agency. Its composition, together with its powers, therefore raises unprecedented constitutional questions of the first magnitude. Can a body, so constituted, exist under our Constitution? By what authority are its members appointed, if not the authority provided in Article II, which allows the President to appoint Officers of the United States by and with the consent of the Senate, and which allows the courts and executive officers to appoint "inferior" officers without Senate confirmation? Four members of the Commission are appointed by Congress itself; all six members are confirmed by the House in addition to the Senate. By what grant of power can a single house of Congress "veto" the rules proposed by an administrative agency? The

Constitution provides that laws are made with the concurrence of the Congress and the President, unless two-thirds of both houses of Congress override the President's veto. Can an agency subservient to Congress make "legislative" rules? Can such an agency possess law enforcement power, when executive authority is reserved to another branch by Title II?

These questions about the composition and duties of the Commission concern the allocation of power in our form of government, an allocation reached through some of the most basic compromises of the Constitutional Convention. Thus, far more is at stake than the particular composition and powers of the Commission; if the Commission constitutionally can exercise the powers bestowed upon it, it may set the example for other agencies yet to be created and the pattern for a process that will work a fundamental alteration in the separation of functions and system of checks and balances between branches of government that the framers believed critical to the success of this republic.

We submit that the Constitution permits the Commission to exist, but that it exists as a legislative agency, as an arm of Congress. As an arm of Congress, it can exercise whatever functions Congress desires to delegate to it. But Congress can delegate to one of its agencies no more power than Congress itself possesses, and Congress cannot enforce the laws, or make laws without the participation of the President. We expand upon these arguments below; before we address them, we explain why we agree

with the court of appeals that it is not yet necessary to decide the issues.

A. This Court Should Not Decide The Central Questions Concerning The Power And Duties Of The Commission.

We agree with the court of appeals' decision not to decide the central issues presented by the existence of the Commission and the scope of its power. Issues of such import should not be adjudicated other than in more concrete circumstances, in which all parties concerned will have adequate opportunity to study specific questions and present them for the Court's consideration free of the pressure of time and weight of other matters that accompany this litigation. The allocation of powers to the Commission does not, at least for the time being, affect the obligations of appellants. They are not more inhibited because one body rather than another will enforce FECA. Challenges to the authority of the enforcing agency can await resolution in circumstances more conducive to judicial contemplation and consideration.

The court of appeals decided that most of the questions plaintiffs present are not ripe for adjudication, finding that (J.S. App. 1576):

> Whether particular powers are predominantly executive or judicial, or insufficiently related to the exercise of appropriate legislative power is an abstract question that would be better decided in the context of a particular factual controversy.

This case is lacking in the particularity necessary to enable a court to perform its function of judicial review. Although it may eventually become clear that Congress and the Commission are attempting to exercise powers reserved to the executive, we cannot be sure that this will happen. The Commission has not exercised, or threatened to exercise, any law enforcement powers, representing that it would refer civil enforcement cases to the Attorney General, except in cases in which the Commission merely is attempting to enforce its right to investigate.[66]

We submit that the case is not made ripe merely because the Commission has the potential to exercise reserved executive functions. Should that potential become reality there will be time enough to adjudicate the matter.[67] So long as the Attorney General exer-

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[66] Congress has the right to enforce its own subpoenas and, if the Commission is an arm of Congress, we see no constitutional bar to possession of such power by the Commission. Cf. *In re Chapman*, 166 U.S. 661; *United States* v. *Bryan*, 339 U.S. 323; *Watkins* v. *United States*, 354 U.S. 178, 206-207. Similarly, the Commission may confine the exercise of its rulemaking power to the establishment of internal rules not binding on the executive.

[67] The Attorney General can bring an action in the nature of *quo warranto* to test the right of the Commission to perform the duties FECA has assigned to it. See *Johnson* v. *Manhattan Ry. Co.*, 289 U.S. 479; *Newman* v. *United States ex rel. Frizzell*, 238 U.S. 537. Such a proceeding would enable the United States and the Commission to proceed, as adversaries, to litigate the central questions of the Commission's authority. The dispute would then squarely be resolved between the major interested parties.

Alternatively, a defendant in a suit prosecuted by the Commission may be able to defend by asserting the lack of the

cises concurrent jurisdiction in civil cases and complete jurisdiction in criminal cases, as the Commission concedes, plaintiffs suffer no additional deterrent or inhibitory effect because one rather than the other of these potential enforcers may take action.

Should the Court disagree with our argument that the court of appeals properly postponed decision on most questions concerning the Commission's authority, we believe that the proper course would be to vacate this part of the judgment of the court of appeals and to remand, to give the court of appeals an opportunity to consider these questions in the first instance. However, out of an abundance of caution, we briefly set out the elements of our position with respect to the Commission's powers. (Be-

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Commission's authority (cf. *Glidden* v. *Zdanok*, 370 U.S. 530; *Palmore* v. *United States*, 411 U.S. 389) or a candidate seeking to block enforcement of a Commission order disqualifying him, or a petitioner seeking review of rules made by the Commission, may have a similar opportunity to litigate. Whether challenges would be permissible in such suits is, however, doubtful in view of the fact that violations of the separation of powers usually must be redressed by the government itself, not by ordinary citizens (*Schlesinger* v. *Reservists Committee to Stop the War*, 418 U.S. 208) and that the "*de facto* officer doctrine," long adhered to by this Court, precludes a private challenge to the acts of a federal official on the basis that he is not a proper officer. See, *e.g.*, *McDowell* v. *United States*, 159 U.S. 596, 601; *In re Manning*, 139 U.S. 504, 506.

The powers of the Commission also might be adjudicated in a criminal prosecution or civil action brought by the United States against an individual who interposes as a defense reliance on an advisory opinion by the Commission. See pp. 112-113, n.71, *infra*. In such a case, of course, the defendant would be seeking to support, rather than oppose, the Commission's powers.

cause we believe that the following discussion is superfluous, we present it without the fullness of argument that the subject deserves.)

B. The Commission Is An Arm Of Congress Because Its Members Are Appointed By Congress And Its Regulations Are Subject To Congressional Control.

It appears to be common ground among the parties and the court of appeals (J.S. App. 1573) that the Commission is an arm of Congress, a "legislative agency," and this is scarcely open to doubt.[68]

While plaintiffs contend that the method of appointment of the Commission's members does not conform with Article II, Section 2, clause 2 of the Constitution, that lack of conformity simply demonstrates

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[68] Four of the Commission's six voting members are appointed by the Houses of Congress; the Commission's *ex officio* members are the Secretary of the Senate and the Clerk of the House; all six of the Commission's voting members must be confirmed by both Houses of Congress; all rules proposed by the Commission can be disapproved by either House of Congress; the Commission must submit proposed legislation to Congress before circulating it to any other agency or executive officer; the Commission must submit its budget requests directly to Congress at the same time as it submits its requests to the Office of Management and Budget. These indicia properly led the court of appeals to accept the Commission's concession and to conclude that the Commission is an arm of Congress under the active influence, if not the day to day control, of Congress. This conclusion is, as the Commission argued in the court of appeals, fortified by the fact that many of the Commission's duties relate to powers—such as Congress' power to judge elections and the qualifications of its members—that Congress can exercise free of control by the executive branch.

that the members of the Commission are neither "other Officers of the United States" nor "inferior Officers." But there is no reason why members of a legislative agency must be "Officers" as Article II uses that term.[69]

In any event, under the Necessary and Proper Clause, Article I, Section 8, clause 18, Congress is entitled to have the aid of others in the performance of its legislative duties and it is necessary and proper for Congress to appoint the persons to provide that assistance.

Plaintiffs also have argued that the "legislative veto" provided for in Section 438(c) is unconstitutional. Whatever constitutional issues might be posed were this a provision for a one-house legislative veto of action by the executive branch,[70] the

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[69] The Constitution expressly grants to Congress the right to appoint its own officers. Article I, Section 2, clause 5 provides that "The House of Representatives shall chuse their Speaker and other Officers; * * *." Article I, Section 3, clause 5 extends similar power to the Senate. The members of the Commission, an arm of Congress, reasonably can be viewed as officers of the bodies that appointed them. Although Congress has provided that the nominees of the House must be confirmed by the Senate, and vice versa, we think they could do so with any of their other officers.

[70] There has been much scholarly debate over the constitutionality of the legislative veto and similar devices for congressional control of executive action. The most recent and thorough study concludes that such devices are often an unconstitutional intrusion into executive authority. Watson, *Congress Steps Out: A Look at Congressional Control of the Executive,* 63 Calif. L. Rev. 983 (1975). See also Ginnane, *The Control of Federal Administration by Congressional*

Commission is an arm of Congress, so that the "legislative veto" established by Section 438(c) is simply one means by which Congress controls its own instrumentality. It is not an attempt by Congress to control the executive branch or an executive officer, nor is it a method by which Congress or the Commission can change the law without presidential participation.

As we see the problem, then, it is not so much a question whether the composition and decisionmaking structure of the Commission are defective, as it is the question what a commission, so constituted and functioning, is permitted by the Constitution to do.

C. The Commission Can Perform Only Those Functions That Congress Or One Of Its Committees Or Employees Could Perform.

In order to minimize the possibility of confusion, we set forth in the margin the Commission's powers we do *not* challenge.[71] The powers of the Commission

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Resolutions and Committees, 66 Harv. L. Rev. 569 (1953); Newman & Keaton, *Congress and the Faithful Execution of the Laws—Should Legislators Supervise Administrators?,* 41 Calif. L. Rev. 565 (1953); Schwartz, *Legislative Control of Administrative Rules and Regulations,* 30 N.Y.U. L. Rev. 1031 (1955); Cooper, *The Legislative Veto and the Constitution,* 30 Geo. Wash. L. Rev. 467 (1962); Jackson, *A Presidential Legal Opinion,* 66 Harv. L. Rev. 1353 (1953).

[71] Congress has substantial powers to investigate and issue subpoenas in order to collect and evaluate information necessary to enable it to make laws. See *Eastland* v. *United States Servicemen's Fund,* No. 73-1923, decided May 27, 1975. Just as a committee of Congress can investigate, issue subpoenas, report to Congress on its findings, and refer to the proper

that are, in our view, unconstitutional infringements of the exclusive power of the President faithfully to execute the laws or of his constitutionally assigned role in the law-making process are the power to seek civil sanctions for violation of FECA, the power to disqualify candidates, and the power to promulgate rules binding upon the executive and the courts.

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authorities any apparent violations of the law, so Congress can authorize its legislative agency to perform similar functions. Congress can authorize its staff to discuss and propose legislation for consideration by it; the Commission's power to do likewise is not open to challenge. Congress can authorize its staff members to inform it of their view of the meaning of legislation it has passed, and to make those views public. Similarly, the power of the Commission to issue advisory opinions is simply a power to announce an opinion on the meaning of a law; it is not a power to alter or amend the law, or to enforce the law (see J.S. App. 1579).

We would have greater pause if the Commission's advisory opinions were binding upon the courts or upon those properly charged with prosecuting violations of FECA. The pertinent provision, 2 U.S.C. 437f(b), states that a person who "acts in good faith in accordance with the provisions and findings of [a Commission] advisory opinion shall be presumed to be in compliance with the provision of this act." If this means that the Commission can confer immunity from prosecution, then it raises serious questions; if it means only that the advisory opinion establishes a presumption in favor of the interpretation of the law set out in it, the problems are less serious, for such presumptions can be rebutted, and the advisory opinions will not bind the coordinate branches of the government. The court of appeals held the question not ripe for resolution, and we think correctly so. "When a person who relied in good faith on an advisory opinion seeks to assert that good faith reliance as a defense to a civil suit or a criminal prosecution, the issue of the effect to be given to an advisory opinion can be raised and fully considered by the courts" (J.S. App. 1579).

1. *The Constitution separates the executive function from the legislative function, reposing each in a separate body.*

Congress, no doubt, was apprehensive when it enacted FECA that the President and Attorney General would not enforce the law in the same way Congress would have enforced it in their stead, and therefore decided to provide the opportunity for executing the law itself. But this tension between departments of the government, and the consequent belief of one department that it would be wiser for it to undertake all of the functions itself, is not a "flaw" in the constitutional system but rather is its genius. See *O'Donoghue* v. *United States*, 289 U.S. 516, 530; *J. W. Hampton, Jr., & Co.* v. *United States*, 276 U.S. 394, 406.

Each branch of the government is charged by the Constitution with the task of preserving its own powers, lest the design of the framers be frustrated. Although the framers concluded that the broadly-representative Congress should possess the power to make the laws, they gave to the President two sorts of check upon Congress: the power to veto bills passed by Congress, and the power to execute the laws (Art. II, Section 3 of the Constitution). And they did so because, as Montesquieu wrote in his *Spirit of the Laws* (1748):

> When the legislative and executive powers are united in the same person, or in the same body of magistracy, there can be no liberty, because apprehensions may arise, lest the same monarch or

> senate should enact tyrannical laws, to execute them in a tyrannical manner.

In contending that the Commission cannot exercise executive powers, we do not suppose that it would exercise its statutory powers unwisely. But that is not the point. In the long run the Commission and other entities like it, if they assume executive branch functions, could seriously deform the structure of government established by the framers and upset the separation of functions and the allocation of checks and balances.[72] The framers "rested the structure of our central government on the system of checks and balances. For them the doctrine of separation of powers was not mere theory; it was a felt necessity." *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 593 (Frankfurter, J., concurring). The system is that stated by the Court in *Massachusetts* v. *Mellon*, 262 U.S. 447, 488:

> The functions of government under our system are apportioned. To the legislative department has been committed the duty of making laws; to the executive the duty of executing them; and to the judiciary the duty of interpreting and applying them in cases properly brought

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[72] The separation of powers works on a principal of frustration of power. It presumes "an organization which may delay the accomplishment by any group of its will, even at the expense of efficiency. Against the unprecedented power of relatively popular legislatures the Fathers set strong executives * * *." Sharp, *The Classical American Doctrine of "The Separation of Powers,"* 2 U. Chi. L. Rev. 385, 386 (1935).

before the courts. The general rule is that neither department may invade the province of the other and neither may control, direct or restrain the action of the other.

2. Law enforcement and interpretive rulemaking are functions assigned to the executive branch.

The Commission has been assigned the power to institute and defend civil suits in its own name and in the name of the United States and to issue rules interpreting FECA, which presumably will bind the Commission and any other agency that enforces FECA. It has also been given an administrative power to disqualify candidates for office, subject to judicial review. Each of these powers is subsumed in the power and duty faithfully to execute the laws; each is part of the power reserved to the executive by Article II of the Constitution.

A long series of cases decided by this Court establishes that the power to enforce the laws in the courts—whether civil or criminal—is an executive power.[73] In *Quinn* v. *United States*, 349 U.S. 155,

[73] The first of these is *The Confiscation Cases*, 7 Wall. 454. The Attorney General brought libels to confiscate several privateers; an informer was entitled, by statute, to one-half of the recovery. When the Attorney General moved to dismiss the cases, the informer objected. The Court rejected the informer's claims, holding that the "[s]ettled rule is that * * * courts will not recognize any suit, civil or criminal * * * if prosecuted in the name and for the benefit of the United States, unless the same is represented by the district attorney" (*id.* at 457). The Court concluded that the Attorney General has full control over all federal litigation (*id.* at 458-459).

the Court, while acknowledging that Congress has the power to investigate events that may be crimes, cautioned: "the power to investigate must not be confused with any of the powers of law enforcement; those powers are assigned under our Constitution to the Executive and the Judiciary" (349 U.S. at 161). See also *United States* v. *Thompson*, 251 U.S. 407.[74]

We think it clear, then, that attempts to enforce the law in the courts are at the heart of the executive's exclusive power faithfully to enforce the laws; these actions are beyond the control of Congress, and likewise beyond the control of its surrogate, the Commission. Interpretive rulemaking also falls within the executive's prerogative or, depending on the nature and function of the rules (which in this case cannot now be determined), is part of the legislative process from which the executive cannot properly be excluded. In regard to the power to make initial determinations that a particular candidate shall be disqualified, whoever has the power to make that initial determination is exercising the power to de-

In *Ponzi* v. *Fessenden*, 258 U.S. 254, 262, the Court described the Attorney General as "the hand of the President in taking care that the laws of the United States in protection of the interests of the United States in legal proceedings and in the prosecution of offences, be faithfully executed."

[74] *United States* v. *Cox*, 342 F.2d 167 (C.A. 5) (*en banc*), certiorari denied, 381 U.S. 935, held explicitly that the power of prosecution belongs solely to the executive branch, and that neither Congress nor the courts can interfere with it in any particular.

termine how the laws shall be applied and carried out. It is an executive function, similar to the decision of a prosecutor to seek an indictment.[75]

In the court of appeals the Commission conceded as much, but argued that the Commission is simply exercising the "quasi-executive" and "quasi-judicial" powers reserved to Congress by Article I. This argument turns on an analysis of the subject matter of the Commission's jurisdiction; the Commission agrees that it could not constitutionally enforce, say, the antitrust laws, but contends that it can enforce FECA because Congress has broader powers over the subject matter of elections and election campaigns. This approach fails to distinguish between the two sorts of power over elections entrusted to Congress.

The first, which is unique to Congress' jurisdiction over elections, gives each House of Congress the power to judge the qualifications of its members, including the validity of elections. So long as Congress excludes a member-elect for failure to meet constitutional qualifications, or because he was not properly elected, it can exercise its power without the approval of either the judicial or executive branches. *Powell* v. *McCormack*, 395 U.S. 486. To the extent Congress has delegated part of that power to the Commission, the Commission acts free of executive interference.

[75] This would be a different matter if the Commission had final authority over disqualification, but it does not. It can make only the initial decision to disqualify, and judicial review follows, just as the judiciary reviews the actions of executive officers or of other quasi-executive agencies.

The Commission is not accurate, however, in characterizing Congress' remaining power over elections as other than ordinary legislative power. That power is the power to make laws with respect to elections and is no broader than its power to make laws with respect to the common defense, the issuance of coin and currency, or the regulation of commerce. The power to make laws with respect to these subjects—and many more—is textually committed to Congress. But what is textually committed is the power to *make* laws, not the power to *enforce* them, and an especially broad subject-matter grant of law-making power does not lead to any conclusion about the scope of Congress' law enforcement power. To argue, as the Commission apparently does, that because Congress has both broad law-making power and a special interest in the subject matter of elections, it *therefore* possesses some manner of law-enforcement power, is a simple *non-sequitur*.

3. *The Commission, acting as an arm of Congress, has no greater authority than does Congress to enforce the laws Congress has made.*

If Congress itself cannot execute the laws, or make rules binding on those who execute the laws, then it cannot deputize a legislative agency to exercise such powers in its stead.[76] Congress cannot bestow

[76] Congress can, of course, make "rules" binding on the executive. But it can make such rules only in the form of law, over which the President has the power of veto. The "rules" made by the Commission are not subject to Presidential veto, and its rules therefore cannot be analogized to laws.

upon its subordinates powers it does not possess. "Legislative power, as distinguished from executive power, is the authority to make laws, but not to enforce them or appoint agents charged with the duty of such enforcement. The latter are executive functions" "[I]t may be stated * * * as a general rule inherent in the American constitutional system, that, unless otherwise expressly provided or incidental to the powers conferred, the legislature cannot exercise * * * executive * * * power * * *." *Springer* v. *Philippine Islands*, 277 U.S. 189, 201, 202.

Springer is the paradigm for Congress' creation of the Commission. Congress, which itself lacks the power to enforce the laws, has attempted to "appoint the agents charged with the duty of such enforcement" (*id.* at 202). It is not entitled to do so.[77]

In sum, law enforcement and interpretation are integral parts of the executive power to execute the laws. Congress is entitled to legislate but not to execute the laws, and Congress has no power to appoint others to execute the laws when Congress cannot do so itself. It follows that the Commission cannot exercise the three executive powers granted to it by FECA.[78]

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[77] See also *Washington* v. *Clark*, 84 F. Supp. 964, 966 (D.D.C.).

[78] Intervening defendant Common Cause filed a separate brief in the court of appeals addressed to the question of the Commission's powers. In supporting the constitutionality of FECA's provisions, Common Cause drew upon two analogies —suits by private attorneys general and suits by independent regulatory agencies—to demonstrate that the powers entrusted to the Commission are constitutional. These analogies do not support Common Cause's argument.

Private citizens can be plaintiffs in *qui tam* actions and sometimes can act as "private attorneys general." But it is one thing to allow private individuals to share a right of suit enjoyed by the executive, and quite another for Congress to take the right of enforcement to itself. It is still a third thing for Congress both to exclude the executive and to include itself in the business of enforcement. The first is no precedent for the third. The separation of powers and checks and balances built into our Constitution establish the method by which two inherently antagonistic centers of power share in the governance of the country. These delicate sharings and checks upon power are not disturbed by private suits. They are disturbed, to a considerable degree, if Congress appropriates to itself a power the Constitution places in a coordinate branch.

As to the analogy to independent regulatory agencies, the argument ignores a decisive difference: the members of the independent regulatory commissions are "Officers of the United States" within the meaning of Article II, Section 2 of the Constitution. They are appointed by the President and are confirmed by the Senate. In consequence, they can share, much as cabinet officers share, in the power granted by Article II to execute the laws. Members of the Commission are not "Officers of the United States" and, in consequence, possess no power under Article II.

CONCLUSION

The position of the Attorney General as a party to this case, and of the United States, is that the court of appeals' judgment with respect to certified question 8 should be affirmed. The United States as

amicus curiae takes no position with respect to the remaining portions of the court of appeals' judgment.

Respectfully submitted.

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JAMES L. BUCKLEY, et al.,
APPELLANTS,

v.

FRANCIS R. VALEO, et al.,
APPELLEES.

ON APPEALS FROM THE COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF SENATORS HUGH SCOTT AND EDWARD M. KENNEDY, *AMICI CURIAE*

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S. 1954, 93d Cong., 1st Sess. (1973)	93
S. 2297, 93d Cong., 1st Sess. (1973)	2, 50
S. 2780, 93d Cong., 1st Sess. (1973)	2
S. 3044, 93d Cong., 2d Sess. (1974)	2
S. 4196, 93d Cong., 2d Sess. (1974)	2, 50
S. 564, 94th Cong., 1st Sess. (1975)	2, 50
S. 1760, 94th Cong., 1st Sess. (1975)	93
39 C.F.R. § 132.2	88
40 Fed. Reg. 44701 (daily ed. Sept. 29, 1975)	60

Books

Chafee, Government and Mass Communications (1947, repr. ed. 1965)	88
Davis, Administrative Law Text (3d ed. 1972)	115
Hocking, Freedom of the Press (1947)	26
Howe, The Garden in the Wilderness (1965)	89
LeFave and Scott, Criminal Law (1972)	118
Madison, Federalist Papers, No. 47	122-23
Madison, Federalist Papers, No. 51	122-23
Rosenthal, Federal Regulation of Campaign Finance: Some Constitutional Questions (1971)	39, 40
Schlesinger (ed.), The Coming to Power (1971)	91
1974 Statistical Abstract of the United States	35

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Articles

Barrow, *Regulation of Campaign Funding and Spending for Federal Office*, 5 U. Mich. J. L. Reform 159 (1972) 40
Comment, *The Constitutionality of Restrictions on Individual Contributions to Candidates in Federal Elections*, 122 U. Pa. L. Rev. 1609 (1974) 40
Developments in the Law — Elections, 88 Harv. L. Rev. 1111 (1975) 40
Bickel, *Commentary*, in Federal Regulation of Campaign Finance: Some Constitutional Questions (1971) . 40
Freund, *Commentary*, in Federal Regulation of Campaign Finance: Some Constitutional Questions (1971) 39
Nicholson, *Campaign Financing and Equal Protection*, 26 Stan. L. Rev. 815 (1974) 40
Note, *Power of Appointment to Public Office Under the Federal Constitution*, 42 Harv. L. Rev. 426 (1929) 108, 124
Note, *Statutory Regulation of Political Campaign Funds*, 66 Harv. L. Rev. 1259 (1953) 40
Sharp, *The Classical American Doctrine of "The Separation of Powers"*, 2 U. Chi. L. Rev. 385 (1935) 122
1969 Congressional Quarterly Almanac 32, 91, 98
29 Congressional Quarterly Weekly (daily ed. July 23, 1971) 35
78 Harv. L. Rev. 1260 (1965) 85

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Legislative Materials

Final Report of the Senate Select Committee on Presidential Campaign Activities, S. Rep. 93-981 (1974) 36, 37, 41, 42, 46
Hearings Before the Senate Committee on Finance on Various Proposals for Financing Political Campaigns, 90th Cong., 1st Sess. (1967) 17, 47
Hearings Before the Senate Select Committee on Presidential Campaign Activities, 93d Cong., 1st Sess. (1973) 37, 41, 42, 43, 45, 46
Hearings Before the Subcommittee on Elections of the House Committee on House Administration H.R. 15317 and Related Bills to Revise the Federal Election Laws, 89th Cong., 2d Sess. (1966) 17, 47
Hearings Before the Subcommittee on Elections of the House Committee on House Administration on H.R. 7612 to Improve the Conduct and Regulation of Federal Election Campaign Activities and to Provide Public Financing for Such Campaigns, 93d Cong., 1st Sess. (1973) 17, 47
Hearings Before the Subcommittee on Elections of the House Committee on House Administration on H.R. 8284 to Limit Campaign Expenditures by or on Behalf of Candidates for Federal Elective Office and For Other Purposes, 92d Cong., 1st Sess. (1971) 17, 47
Hearings Before the Subcommittee on Privileges and Elections of the Senate Committee on Rules and Administration on Bills Proposing Amendments to and Improvements in the Federal Election Laws, 90th Cong., 1st Sess. (1967) 17, 47

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Hearings on a Survey of Public Attitudes Before the Subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations, 93d Cong., 1st Sess. (1973) 42

Hearings on H.R. 7612 and S.372 Before the Subcommittee on Elections of the House Committee on House Administration, 93d Cong., 1st Sess. (1973) 43, 45

Hearings on S.372 Before the Subcommittee on Privileges and Elections of the Senate Committee on Rules and Administration, 93d Cong., 1st Sess. (1973) 42, 45

Hearings on S.382 Before the Subcommittee on Privileges and Elections of the Senate Committee on Rules and Administration, 92d Cong., 1st Sess. (1971) 45

Hearings on S.3496, Amendment No. 732, S.2006, S.2965, and S.3014 Before the Senate Committee on Finance, 89th Cong., 2d Sess. (1966) 36

H.R. Rep. 93-1239 (1974) 18, 47, 58, 59, 118

S. Rep. 93-170 (1973) 18, 47, 58

S. Rep. 93-310 (1973) 18, 47, 58

S. Rep. 93-689 (1974) 18, 47, 58, 95

S. Rep. 93-1237 (1974) 18, 48, 58

120 Cong. Rec. S4553 36

S18525 120

H10328 120

H10331 120

H10344 120

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-436
No. 75-437

JAMES L. BUCKLEY, et al.,
APPELLANTS,

v.

FRANCIS R. VALEO, et al.,
APPELLEES.

ON APPEALS FROM THE COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF SENATORS HUGH SCOTT AND EDWARD M. KENNEDY, *AMICI CURIAE*

Interest of the Amici

This case results from a sweeping constitutional attack upon every aspect of the Federal Election Campaign Act of 1971, 86 Stat. 3 (1972), and the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263 (1975).

The thrust of each of appellants' major contentions is that the Congress is powerless to counter either the pressure on candidates in federal elections to raise and spend more and more money from contributors expecting later governmental favors, or the growing public belief that both political campaigns and government itself are a giant "rip-off" by those with large sums of money to give to candidates in order that the candidates may "buy" elections and later give to the contributors governmental favors in return for their largesse.

Hugh Scott is a Republican Senator from Pennsylvania and Minority Leader of the United States Senate. Edward M. Kennedy is a Democratic Senator from Massachusetts. In recent Congresses they were the bipartisan sponsors of the major bills to provide for public financing of elections for President of the United States, United States Senator and United States Representative. Amendment 406 to S.372 (to amend the FECA), 93d Cong., 1st Sess. (1973); S.2297 (to amend Subtitle H of the Internal Revenue Code), 93d Cong., 1st Sess. (1973); Amendment 651 to H.R. 11104 (the Debt Ceiling Act), 93d Cong., 1st Sess. (1973); S.2780, 93d Cong., 1st Sess. (1973); S.3044, 93d Cong., 2d Sess. (1974); S.4196, 93d Cong., 2d Sess. (1974); S.564, 94th Cong., 1st Sess. (1975). The substance of these measures and much of the language were incorporated into provisions of the Federal Election Campaign Act Amendments of 1974, here at issue, which provide for public financing of campaigns for nomination as a candidate for election as President and for the election campaign itself.

Senator Scott and Senator Kennedy also played active roles in the deliberations of the Senate upon all the other provisions of the Federal Election Campaign Act and the amendments of 1974. Both became thoroughly familiar with the evils flowing from spiraling campaign costs and pressure to raise the necessary funds by large private

contributions, and with the problems encountered in framing remedies and the reasoning underlying the congressional decisions. Both were members of the Conference Committee whose report led to enactment of the present law.

The Executive Branch is ambivalent in its position upon the issues. The Solicitor General has signed two briefs, one calling for affirmance and the other stating that he takes no position upon critical constitutional issues. Questions concerning the respective powers of the Congress and the President are at stake in the portion of the case relating to the appointment of members of the Federal Election Commission. These unusual circumstances make it appropriate for the Court to consider a bipartisan submission from two members of the Legislative Branch who were active supporters of the challenged measure.

Questions Presented

Twenty-eight certified questions are before this Court under the special statutory procedure (2 U.S.C. § 437h) which calls for expedited rulings upon the constitutionality of the Federal Election Campaign Act of 1971, P.L. 92-225, 86 Stat. 3 (1972), 2 U.S.C. (Supp. III) §§ 431 *et seq.*; and the Federal Election Campaign Act Amendments of 1974, P.L. 93-443, 88 Stat. 1263 (1975). In substance, there are five central questions:

1. Has Congress power to legislate with respect to financial contributions and expenditures in political campaigns for election to federal office?

2. Do the restrictions imposed by the Federal Election Campaign Act upon the size of contributions to candidates for federal office, and of expenditures made by candidates or in their support, violate the First Amendment, either on the face of the statute or as its operation can now be projected?

3. Do requirements for the detailed reporting and disclosure of all contributions received and expenditures made in campaigns for election to federal office violate the First Amendment, either on the face of the statute or as its operation can now be projected?

4. Does the appropriation and expenditure of federal funds in the form of grants to defray the campaign expenses of candidates for the office of President of the United States violate the First or Fifth Amendment, either on the face of the statute or as its operation can now be projected, where the grant to each candidate in the primary elections is to match the sum he raises from private contributions of $250 or less and the grant to candidates in the general election is limited to $20,000,000 for each of the major-party candidates with a ban against further expenditures, with grants to minor-party and new-party candidates according to formulas reflecting their probable importance without limiting their right to seek private contributions and thus make expenditures up to a total of $20,000,000?

5. Is the establishment of a Federal Election Commission with a variety of investigative, interpretative, rule-making and enforcement powers or the conduct of any FEC business to be declared unconstitutional *in limine* because two of the eight members are the chief clerks of the Senate and the House of Representatives *ex officio*, two are selected by the Speaker of the House, two by the President *pro tempore* of the Senate, and two by the President of the United States, with all six approved by a majority of both Houses of Congress?

Summary of Argument

I

The restrictions which the FECA, as amended, puts upon the size of financial contributions and expenditures in campaigns for election to federal office serve high objectives: to preserve the integrity of federal political campaigns and elections, and public confidence therein; to safeguard the honor and integrity of the conduct of government, and public confidence therein; to reduce the financial barriers to the candidacies of men and women without access to large contributors of money or their own personal wealth; and to equalize access to candidates and government officials as among wealthy contributors and other citizens. Judged in the light of these pressing interests, the restrictions are well within the power of the Congress and the President to make into law without offending constitutional limitations.

A. Congress has ample power to legislate for these objectives, not only by virtue of Article I, Section 4 of the Constitution but in the exercise of an inherent power to preserve the general government against destruction by corruption.

B. The restrictions are consistent with the First Amendment. The substance of political debate is left untouched. There is no attempt to censor, directly or indirectly, either the ideas that may be expressed or the vehicles chosen for their expression. The restrictions deal only with conduct, with the transfer or use of money and other material resources. The distinction has critical importance despite the likelihood that the restrictions upon the use of money may, in some cases, limit the volume of communication with the voters through the mass media — an important form of speech protected by the First Amendment.

A law which restricts the kinds of ideas, information or feelings which may be expressed or the verbal or pictorial vehicles of expression, or which discriminates among persons who may express them, can be justified — if at all — only in terms of the dangers posed by the ideas or their expression. The constitutional test is exceedingly stringent in such cases, because such censorship not only suppresses information essential to self-government; it also carries the seeds of official ideology and dangerous discrimination.

The constitutional standard is less severe when the statute regulates conduct, one of the consequences of which is to enlarge the enjoyment of freedom of expression but which also does public injury unrelated to any effect of the communication facilitated. The injury may require a measure of public control directed to the conduct without regard to the character or consequences of the ideas or their expression. A law which regulates such conduct evenhandedly is constitutional, even though its operation may in practice tend in some degree to curtail practical opportunities for gaining the maximum benefit of First Amendment freedoms, if the public interests which the measure serves outweigh its costs in curtailment of opportunities for expression.

In the present case, the balance is on the side of constitutionality. The restrictions imposed by Section 608(c) upon aggregate campaign expenditures leave ample opportunity for a candidate to achieve public recognition and lay his case before the electorate even if he begins relatively unknown. Since the statutory ceilings are closely related to the expense of past campaigns, their chief function will be to prevent further rise and cut back wild extravagance. The magnitude and value of the public interests identified at the outset of this Summary show that the justification for any limitation of opportunities to buy

use of media of mass communication which results from the ceilings, is "paramount" or "compelling" in the constitutional sense. These purposes cannot be accomplished by less restrictive measures.

Section 608(e) is particularly assailed because it forbids any person to expend more than $1,000 in any one election to elect a candidate or defeat his opponent, even without consulting the candidate. In its broadest reach, this limitation appears to bar an outlay of more than $1,000 to publicize one's own words. The problem was one of drawing lines. Without Section 608(e), the $1,000 ceiling upon individual contribution and the over-all ceiling upon expenditures by or on behalf of a candidate could easily be circumvented by massive expenditures for campaign advertising and other forms of mass communication made in support of a candidate without any provable communication between the supporter or group of supporters and the candidate or his agents. The same considerations that sustain the constitutionality of the ceiling upon individual contributions sustain Section 608(e) in these instances. Given the need for limiting some kinds of ostensibly independent expenditures, Congress drew the line between truly personal activity, on one side, and spending money, on the other.

The language is tightly drawn so as not to discourage political discussion oriented towards public issues. The restriction applies only to publications "relative to a clearly identified condidate" and only to those "advocating the election or defeat" of that particular person. In Section 591(f), Congress also made certain that Section 608(e) would not interfere with an individual's personal activities in speaking, writing or canvassing for a candidate, or performing other services, without using money to expand the reach of his words. Given these carefully circumscribed limits, we believe that the contribution which

Section 608(e) makes to the workability of the entire plan justifies restricting even the ability of an individual to buy facilities for giving the maximum publicity to his own speech on behalf of a candidate.

This last question is too hypothetical, however, for decision in the present case. Neither pleading nor proof names any person who wishes to make such outlays in order to gain a wider audience for his own words. Any facial attack upon grounds of overbreadth should be rejected upon the ground that the challenged legislation deals with conduct, *i.e.*, spending money, and the overbreadth, if any, is insubstantial judged in relation to Section 608(e)'s plainly legitimate sweep.

B. The ceilings upon individual contributions and candidates' expenditures do not discriminate against any type of candidate or party, either inherently or insofar as their operation can now be projected. The ceilings apply alike to all candidates and financial contributors without regard to party or other form of political sentiment. Neither express language nor euphemism nor disingenuous circumlocution introduces any form of differentiation. The ceilings do not result in any systematic discrimination always favoring incumbents and established parties as a class.

Appellants complain that other laws and facts of political life result in discrimination because incumbent Senators and Representatives enjoy methods of communicating with voters and bringing themselves to public attention which are not available to those who run against them, such as congressional staff, franked mail, office space, and like responsibilities and perquisites of office, including the ability to make news. Insofar as the complaint is that the performance of public duty brings greater public recognition, which may yield returns in a campaign for reelection, the short answer is that the Constitution does not require the government to provide challengers with some offsetting

method of attracting ballots. Insofar as the argument is that the staff and facilities provided to Congressmen are used as campaign facilities which challengers have to purchase, the answers are: (i) that appellants have proved no abuse, general or particular; (ii) that any such discrimination flows not from the FECA but from other laws which should be attacked directly in an appropriate action if there is abuse; and (iii) that no appellant is a victim of the alleged discrimination because none is a challenger to an incumbent or alleges that he wishes to make such a challenge.

Appellants' argument that in practice the ceilings will discriminate against challengers and in favor of incumbents fails for a number of reasons. It rests upon speculation about future events as to which the Court will not substitute its prediction for the judgment of Congress. It deals only with the challenger's supposedly greater need for big spending and omits the probability that in the absence of ceilings, the incumbent may have an advantage in raising contributions, and thus, in making expenditures. The argument asserts only that the ceilings upon the size of financial contributions and a candidate's aggregate expenditures will operate in practice to "discriminate *generally* against challengers and *generally* in favor of incumbents" (Br. p. 94, emphasis added). One cannot make a case of unconstitutional discrimination by this kind of statistical averaging and prediction. Most important, the constitutional ideal of equality does not require the government to allow the otherwise weaker candidate to spend the most money in order to offset his deficiencies. Because public recognition pretty regularly accompanies incumbency, a challenger must be allowed generous opportunity to present himself to the public. The statutory ceilings are more than ample for that purpose. Once that purpose is served, equality in the constitutional sense is achieved by

treating the rivals exactly alike in the segment of their activities to which the law applies, while leaving them where they were in every other aspect of their appeal to the electorate.

II

The FECA requirements for detailed record-keeping, reporting and disclosure of virtually all campaign contributions and expenditures are constitutional upon their face and insofar as their operation is projected by this record.

The requirements serve three purposes: (i) to provide voters with relevant information; (ii) to guard against the use of money for corrupt or dishonorable purposes; and (iii) to deter violation and facilitate enforcement of the ceilings on contributions and expenditures.

These purposes are of compelling importance in the case of minor as well as major parties. They would amply justify such slight discouragement of the exercise of freedom of association as may be expected to flow from them because a few persons prefer to keep private the fact or extent of their gifts of money for political purposes. There is no evidence that any appellant or other contributor risks subjection to substantial public reprisals. Such speculative hazards as appellants articulate are "too remote to require striking down a statute which on its face is otherwise plainly within the area of congressional power and is designed to safeguard a vital national interest." *United States* v. *Harriss*, 347 U.S. 612, 626 (1954).

This case does not raise the question whether the reporting requirements would be constitutional as applied to a political party so unpopular that disclosure of the names of its financial supporters would subject them to risk of widespread public reprisal. Even if unconstitutionality in some applications be assumed, the resulting

overbreadth would not render the disclosure provisions unconstitutional on their face. The direct regulation of speech is not involved and the overbreadth, if any, is insubstantial judged in relation to the statute's plainly legitimate sweep. Moreover, the statute need have no "chilling effect" upon the exercise of First Amendment freedoms in this area because any party faced with such unpopularity would have standing to raise the issue without risking prosecution of either itself or its supporters.

III

Article I, Section 8 grants Congress power to make appropriations "for the general welfare." Providing adequate public financing by which candidates for election as President of the United States may present themselves and their views to the electorate serves such a purpose. The related restrictions upon expenditures, especially the $20,000,000 ceiling upon the aggregate expenditures of any candidate (18 U.S.C. § 608(c)), is within the legislative power of Congress for reasons previously discussed.

Even-handed public financing of the cost of election campaigns is consistent with both the words and spirit of the First Amendment. The financial support, viewed as a whole, goes not to any particular candidate, or party, or political opinion, but to promote the process of public deliberation prior to balloting. Where the Establishment Clause and history conjoin to teach that the government shall not promote religion, because the domain of religion should be set aside as a garden in the wilderness, neither the text of the guaranty respecting speech nor historic experience denies the public the means of providing for that fullness of political debate necessary to the preservation of representative government.

Appellants complain of unconstitutional discrimination

because in general Presidential elections the public financial aid available to the candidates of minor parties and new parties is less than the subvention available to the candidates of major parties, *i.e.*, those whose candidates received more than 25 percent of the vote in the previous election. "Sometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike." *Jenness* v. *Fortson*, 403 U.S. 431, 441-42 (1971). Congress was not required to ignore the manifold greater significance of major parties in terms of their ability both to win elections and to raise campaign funds. No presidential candidate nominated by a minor party or new party has ever been elected. Minor party and new party candidates have not come close for sixty years. The formulas for allocating aid provide equal treatment to all candidates and groups in relation to their electoral needs and potential.

Indeed, when the grants of financial support and the restrictions upon expenditures are taken as a whole, there is every reason to believe that the FECA, as amended, will improve the relative financial position of the Presidential candidates of minor parties and new parties. Under FECA a major party candidate receives $20,000,000 *in substitution* for the ability to raise and spend several times that sum. The minor party candidate receives a payment proportionate to its probable significance measured by the electoral vote in the last election *plus* the sums which it can raise and spend from private sources *plus* the guaranty of a further sum after the election, if deserved, in order to make its subsidy proportionate to its actual electoral significance. When this package of financial opportunities is compared with the $20,000,000 to which the major party candidates are limited, it seems highly probable that any minor party candidate will be relatively better off financially than in the absence of

legislation. New parties receive no advance public subvention, but the ceiling upon expenditures should improve their relative position. Any slight risk that a minor or new party candidate will lose financial power relative to a major party because of some unforeseen circumstance is justified by the interest in avoiding wasteful public expenditures serving chiefly to promote frivolous candidacies, splintered parties or unrestrained factionalism.

The FECA, as amended, also enlarges the opportunity to seek nomination for election to the Presidency despite lack of wealth or access to wealth by providing matching grants for candidates who show that they have received contributions aggregating at least $5,000 from the residents of each of 20 States, counting only the first $250 of each contribution. The eligibility requirements are designed to confine the federal subsidy to those candidates who have such serious support of their own as to give them a significant chance of winning nomination. The matching payments do not wipe out but plainly tend to reduce inequalities of opportunity due to differences in ability to raise large contributions. The imaginary candidate with popular support but no ability to raise funds is unlikely to find himself worse off than before. At worst, he loses only some marginal chance that he might have won the nomination instead of the candidate whose success is attributable to funds which that candidate would not have had without the public subvention. A reform measure that moves strongly in the direction of eliminating the consequences of economic disparities is not unconstitutional merely because some of life's unfairnesses remain unchanged.

IV

The court below correctly ruled that the Federal Election Commission was lawfully established and its members constitutionally appointed, without deciding whether the FECA provisions purporting to give the Commission power to institute civil actions and recommend criminal prosecution are unconstitutional invasions of Executive prerogatives. The Commission has a core of other important powers of kinds which do not belong exclusively to the Executive and which have often been vested in agencies deliberately put beyond executive control. The Commission's duties to conduct studies and recommend legislation, to conduct audits and make certifications in connection with public financing of federal elections, to serve as a depositary of financial reports, and to issue interpretative opinions and rules and regulations implementing the FECA are all functions which may constitutionally be assigned to an independent agency.

The Federal Elections Commission was designed to be, and is, an agency independent of both Congress and the President in the performance of the bulk of its duties. There were unique reasons not only for that choice but more especially for the dividing the selection of the six voting members among the President of the United States, the Speaker of the House of Representatives, and the President *pro tem.* of the Senate. The incumbent President would soon be seeking nomination and election. He would be leading his Party in the 1976 campaigns for Senator and Representative. The six new commissioners would be rendering interpretations of a new law which might well be thought to injure one major party and assist the other. The six members to be appointed might soon be required to certify whether the incumbent President was entitled to matching funds under 26 U.S.C. §§ 9033-9036 in seeking

nomination, and later, to determine whether his Party and he, himself, were eligible for payments under 26 U.S.C. §§ 9003-9005, 9008. It would be their duty to make careful audits of his accounts and obtain repayment if found due. It would also be their duty to receive other reports from him as a candidate, to determine how to publish them, and to scrutinize them for violations. No argument is needed to show the unsoundness of providing that all six men should be selected by the chief political figure with whom they must deal and whose behavior they must scrutinize. Dividing the authority to appoint the six voting members of the Commission among three high ranking officials, including the President of the United States, was calculated to remove the Commission from any single source of influence, and to guard against any single set of mind. Still further assistance is contained in the requirement that the President *pro tem.* of the Senate and the Speaker of the House appoint "upon the recommendations of the majority leader . . . and the minority leader . . . ."

Nothing in the words of Article II or the theory of the separation of powers bars this solution to a new and unique problem. The sum of legislative and executive practice, and of the rare judicial rulings, is that the President, generally speaking, exercises both the power to appoint and to remove, but that deviations from the principle, including virtual appointment by Congress, will be permitted when special occasion requires.

The Federal Elections Commission will occupy a unique role in our politics and government. It can succeed only if its complete independence and freedom from bias or predilection is trusted by both rival candidates and citizenry. Dividing the power of appointment so that no more than two of six members would ever owe their position to a single source is an important step in enabling the Commission to build that essential trust.

Argument

Introduction

For government of the people to survive public office must be kept a public trust. Corrosion of the honor and integrity of official decisions will destroy representative government more surely than conquest by force. Alienation of the citizenry from the political system because it sees the system losing integrity is a final phase of the fall.

In the United States, in our time, these dangers are neither hypothetical nor remote. Through the 1960's and into the 1970's ever-more staggering sums of money were being spent in each new federal election campaign, as candidates either sought to win by big spending or, despite their distaste, feared to let their rivals outspend them. The need for enormous sums of money sent candidates "where the money is," seeking ever larger individual and concealed-corporate contributions. Often the big contributions came from those whose business interests would be directly affected by government decisions, for the expansion of government regulation and spending has brought more business interests within the impact of day-to-day governmental action. Decisions favoring those interests then flowed from officials subject to pressure from the successful candidates or political party which had received such largesse. Cause and effect? The relation is seldom clear. But other businessmen were feeling pressure to match the contributions of their competitors. Citizens who observed the course of events, especially young men and women into whose hands the Republic would soon be committed, were alienated by the evidence that the world of politics and government served chiefly the "big money" which brought political success.

Congress faced the danger squarely, with evident appreciation of the weight of its responsibility. The debate was full; the deliberations, mature. Congressional concern with the improper influence of large financial contributions goes back to early in the present century. See *United States* v. *UAW*, 352 U.S. 567, 570-84 (1957). Congressional deliberations leading to the challenged legislation began in 1966 and proceeded at a high level of interest for eight years. During this period three major laws were enacted and later revised. Presidential Election Campaign Fund Act, P.L. 89-908, 80 Stat. 1587 (1966); Federal Election Campaign Act of 1971, P.L. 92-225, 86 Stat. 3 (1972); Subtitle H of the Internal Revenue Code, P.L. 92-178, 85 Stat. 562 (1971); and Federal Election Campaign Act Amendments of 1974, P.L. 93-443, 88 Stat. 1263 (1975). There were elaborate hearings: *Hearings Before the Subcommittee on Elections of the Committee on House Administration on the Federal Election Laws,* 89th Cong., 2d Sess. (1966); *Hearings Before the Senate Committee on Finance on Various Proposals for Financing Political Campaigns,* 90th Cong., 1st Sess. (1967); *Hearings Before the Subcommittee on Privileges and Elections of the Senate Committee on Rules and Administration on Bills Proposing Amendments to and Improvements in the Federal Election Laws,* 90th Cong., 1st Sess. (1967); *Hearings Before the Subcommittee on Elections of the House Committee on Administration on H.R. 8284 to Limit Campaign Expenditures by or on Behalf of Candidates for Federal Elective Office and For Other Purposes,* 92d Cong., 1st Sess. (1971); *Hearings Before the Subcommittee on Elections of the House Committee on Administration on H.R. 7612 to Improve the Conduct and Regulation of Federal Election Campaign Activities and to Provide Public Financing for Such Campaigns,* 93d Cong., 1st Sess. (1973). When Congress revisited the en-

tire subject in 1973 and 1974 after observing the operation of earlier laws in the 1972 elections, there were three careful Senate reports, two reports made by the Committee on Rules and Administration (S. Reps. 93-310, 93-689) and one by the Committee on Commerce (S. Rep. 93-170). An elaborate report was also filed by the House Committee on Administration (H.R. Rep. 93-1239). There was protracted debate in both chambers and an elaborate Conference Report (S. Rep. 93-1237). Thus, "[t]he bill . . . did not steal upon an unsuspecting legislature, and pass unobserved. Its principle was completely understood, and was opposed with equal zeal and ability. After being resisted first in the fair and open field of debate, and afterwards in the executive cabinet, with as much persevering talent as any measure has ever experienced, and being supported by arguments which convinced minds as pure and as intelligent as this country can boast, it became a law . . . . It would require no ordinary share of intrepidity to assert, that a measure adopted under these circumstances, was a bold and plain usurpation, to which the constitution gave no countenance." *McCulloch* v. *Maryland*, 4 Wheat. 316, 402 (1819).

The remedies provided by Congress in the Federal Election Campaign Act, as amended, regulate the financing — and only the financing — of political campaigns for election to federal office. Many provisions are long and complex, partly because experience demonstrated the dangers of evasion and avoidance, but partly because concern for political liberty required Congress to resolve questions of degree with all the precision that language permits. The five central themes are simple and direct:

(1) The size of individual and organizational contributions is limited.

(2) Ceilings are placed upon the aggregate of expenditures a candidate may make in seeking elective federal office.

(3) Detailed reporting and disclosure is required for contributions and expenditures within the statutory limits.

(4) Public financing is provided in Presidential elections for candidates with substantial public support.

(5) A strong, independent and permanent commission is established to implement these measures and investigate the need for further electoral reform.

The basic issues in this case are framed by appellants' contention that Congress has no power to prescribe any of these remedies for the evils corroding our national political life. The thrust of their argument is that Congress may do *nothing* to limit the size of candidates' financial expenditures, *nothing* to limit the size of the gifts of money which candidates may accept, *nothing* to require disclosing the names of contributors to any but Democratic and Republican candidates, and *nothing* to substitute public financing for reliance upon the private contributions which are the source of such grave danger.

We believe that the Congress is not so impotent in dealing with a national crisis. The remedial measures adopted are within the basic legislative powers of Congress and fully consistent with the words and underlying values of the First Amendment. The substance of political debate is left untouched. The restrictions upon contributions and expenditures, and also the requirements of disclosure, deal not with speakers or ideas but with conduct — with the giving and spending of money and like financial resources. Indirectly they will probably check further increases, and may somewhat reduce, the amounts of money available to hire media of mass communication, but those consequences, even though enough to implicate the First Amendment, are amply justified by the Act's contribution

to the openness and integrity of the political system. The plan for public financing in campaigns for nomination and elections as President serves the same high purposes. The appropriations promote general public debate upon candidates and issues without favoring any candidate, political party or ideology. Minor parties and new parties will have relatively greater spending power *vis a vis* the major parties as a result of the total package of restrictions and payments from the Presidential Election Campaign Fund.

The fundamental issues concerning whether Congress has power to restrict the size of contributions and expenditures, or to require any disclosure of the identity of any contributors, or to provide public financing in any circumstances are properly before the Court because they go to the facial validity of a statute touching immediately upon the interests of one or more appellants. Appellants have also identified, concretely and with particularity, some activities in which they would engage, or others would engage for their benefit, but for the statutory prohibitions. The constitutionality of the Act as applied in these concrete instances is also properly before the Court. FECA Section 315(a), codified as 2 U.S.C. § 437h, supplies an expedited procedure and eliminates any question concerning appellants' standing to challenge the public financing of costs of political campaigns. See *Flast* v. *Cohen,* 392 U.S. 83, 120 (1968) (dissenting opinion).

Appellants also present many purely hypothetical questions, which have not taken shape and may never arise. In our view, Section 315(a) does not authorize decision of such questions. Such a mandate would be an unconstitutional effort to enlarge the Court's jurisdiction beyond the "cases" and "controversies" to which the judicial power under Article III is confined. "Passing upon the

possible significance of the manifold provisions of a broad statute in advance of efforts to apply the separate provisions is analogous to rendering an advisory opinion upon a statute or a declaratory judgment upon a hypothetical case." *Watson* v. *Buck,* 313 U.S. 387, 402 (1941).

We discuss these limitations upon the scope of the questions before the Court at greater length in the appropriate substantive context. It is enough preliminarily to note three points:

First, the only constitutional questions to be decided in this case are whether any challenged FECA provision is unconstitutional on its face or as applied to a live controversy growing out of a concrete situation presented by appellants' factual allegations or proof.

Second, the constitutional questions properly before the Court are not to be decided for all time regardless of major changes in social, economic, or political conditions. An Act of Congress which is constitutional under one set of conditions may be held invalid upon sufficient demonstration that conditions have critically changed. *Chastleton Corp.* v. *Sinclair,* 264 U.S. 543 (1924); *Milnot Co.* v. *Richardson,* 350 F. Supp. 221 (S.D. Ill. 1972).

Third, arguments charging unconstitutional vagueness because of borderline questions of interpretation should carry little weight in this case. No one need refrain from any lawful activity or trim his words because of uncertainty concerning the meaning of the Act. The Act requires the Federal Elections Commission to give anyone considering a specific course of conduct an advisory opinion in writing. If he relies upon the opinion in good faith, he is not guilty of a criminal offense. 2 U.S.C. § 437f.

I

THE RESTRICTIONS UPON THE SIZE OF FINANCIAL CONTRIBUTIONS TO CANDIDATES FOR FEDERAL OFFICE AND UPON EXPENDITURES BY THEM OR IN THEIR SUPPORT ARE CONSTITUTIONAL ON THEIR FACE AND INSOFAR AS THEIR OPERATION CAN BE PROJECTED UPON THIS RECORD.

A. *Congress Is Empowered to Legislate Concerning Financial Contributions and Expenditures in Federal Elections.*

Congress has full power to enact legislation for preserving the integrity of federal elections. In the case of Senators and Representatives, the power is expressly delegated by Article I, Section 4. *Ex parte Siebold,* 100 U.S. 371 (1879); *United States* v. *Mosley,* 238 U.S. 383 (1915); *United States* v. *Classic,* 313 U.S. 299 (1941). In the election of the President, the power is inherent. *Ex parte Yarbrough,* 110 U.S. 651 (1884); *Burroughs* v. *United States,* 290 U.S. 534 (1934). In the latter case the Court declared:

> To say that Congress is without power to pass appropriate legislation to safeguard such an election [*i.e.* a Presidential election] from the improper use of money to influence the result is to deny to the nation in a vital particular the power of self protection. Congress, undoubtedly, possesses that power, as it possesses every other power essential to preserve the departments and institutions of the general government from impairment or destruction, whether threatened by force or by corruption. *Id.* at 545.

Congress is also authorized to enact legislation securing the conduct of government against financial corruption and other forms of improper influence. The Court recognized the existence of this power in the passage just quoted from *Burroughs.* It has consistently sustained such legislation, including restrictions upon the political activities of civil servants, *Ex parte Curtis,* 106 U.S. 371 (1882); *United States* v. *Wurzbach,* 280 U.S. 396 (1930); *United Public Workers* v. *Mitchell,* 330 U.S. 75 (1947); *Civil Service Commission* v. *Letter Carriers Union,* 413 U.S. 548 (1973), registration of lobbyists, *United States* v. *Harriss,* 347 U.S. 612, 625 (1954), the punishment of bribery and conflicts of interest, *Burton* v. *United States,* 202 U.S. 344 (1906); *United States* v. *Brewster,* 408 U.S. 501 (1972), and the punishment of conspiracies "for impairing, obstructing or defeating the lawful function of any department of Government," *Haas* v. *Henkel,* 216 U.S. 462, 479 (1910). See also *In re Coy,* 127 U.S. 731 (1888).

The legislation here challenged is within the ambit of the delegated powers. Its objects are to preserve the integrity of federal political campaigns and elections, and public confidence therein; to safeguard the honor and integrity of the conduct of government, and public confidence therein; to prevent the violation or circumvention of earlier laws regulating financial abuses in election campaigns; to reduce the actual and apparent influence of vast financial resources on the outcome of elections; to reduce the financial barriers to the candidacies of men and women without access to large contributors of money or their own personal wealth; and to equalize access to candidates and government officials as among wealthy contributors and other citizens.

The power to legislate for these objectives being clear, the choice among means reasonably related to the ends is for Congress, subject only to inquiry whether the means

selected violate a guaranty of liberty in the First or Fifth Amendment. Cf. *Burroughs* v. *United States*, 290 U.S. 534, 547 (1934).

B. *The Ceilings Upon Contributions and Expenditures Are Consistent With the First Amendment, as Enacted and as Applied to Any Situation Ripe for Adjudication.*

The restrictions upon the size of campaign contributions and expenditures do not deny anyone the right to speak or to associate himself with others. The Act does not prohibit, punish, or attach liability to any form of utterance, publication or communication as such. The substance of political debate is left untouched. There is no attempt to censor, directly or indirectly, either the ideas that may be expressed or the vehicles chosen for their expression. Moreover, this statute, unlike the law under attack in *United States* v. *CIO*, 335 U.S. 106 (1948), and *United States* v. *UAW*, 352 U.S. 567 (1957), does not discriminate among individuals or organized groups in opportunities to express their political concerns. The restrictions here at issue deal only with conduct, with the transfer or use of money and other material resources. Appellants' argument ignores this simple truth.

The restrictions upon conduct will undoubtedly have some practical effects upon opportunities for enjoying some forms of freedom of political expression and for increasing the effectiveness of political associations. In modern society money gives access to the channels of mass communication: radio and television broadcasts, newspaper advertisements, direct mailing, and other media of expression. If a particular candidate has the capacity to raise and spend such large sums of money as to exceed the ceiling upon campaign expenditures, then the ceilings

will probably limit the number of people reached by his speeches, advertising and slogans, and also the frequency with which his name, virtues and views are brought to public attention. The ceilings upon individual financial contributions[1] may have similar consequences, either because the candidate cannot raise the full amount he is allowed to spend without obtaining some gifts exceeding the ceilings, or because larger contributions are needed to buy the means of mass communication at the time when they will be most effective. The restrictions upon individual expenditures on behalf of a candidate[2] and upon a candidate's expenditures from personal or family funds[3] may have similar consequences.

Although the indirect effects of the ceilings upon opportunities to buy use of the media of mass communication are enough to require consideration of the bearing of the First Amendment, the distinction between regulation of the use of money and regulation of speech itself has critical constitutional importance. The reasons are these:

A law which restricts the kinds of ideas, information or feelings which may be expressed,[4] or the verbal or pictorial vehicles of expression,[5] or which discriminates among persons who may express them,[6] can be justified — if at all — only by showing either the existence of some overwhelming public exigency[7] or the utter worthlessness of the mes-

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[1] §§608(b)(1) and (3).
[2] §608(e).
[3] §608(a).
[4] *E.g.*, New York Times Co. v. Sullivan, 376 U.S. 254 (1964); New York Times Co. v. United States, 403 U.S. 713 (1971).
[5] *E.g.*, Cohen v. California, 403 U.S. 15 (1971); Spence v. Washington, 418 U.S. 405 (1974).
[6] *E.g.*, United States v. UAW, 352 U.S. 567 (1957).
[7] *E.g.*, New York Times Co. v. United States, 403 U.S. 713, 726, 730, 731 (1971). In a few instances the restriction is limited to the circumstances of a particular time and place but based upon the dangerous character of the ideas expressed. *E.g.*, Brandenberg v. Ohio, 395 U.S. 444 (1969). In such cases the justifying public

sage.[8] When the government attempts to deal with speech directly, the case for regulation must be made—if it can be made at all—in terms of the danger posed by the ideas. The constitutional test is exceedingly stringent in such cases, if indeed the First Amendment ever permits such regulation in a medium of unrestricted access. Such censorship offends the individual's duty to voice the truth he has discovered;[9] it may deprive the people of information essential to self-government; it also carries the danger of discrimination and the seeds of official ideology.

A generalized regulation of conduct, not tied to any particular ideas, speakers or forms of expression, carries none of these dangers. Conduct, even when one of its consequences is to facilitate the exercise of freedom of speech or of the press, may work public injury unrelated to any effect of the communication facilitated. The injury may require a measure of public control directed to the conduct without regard to the character of the ideas or their expression. Here, the constitutional standard is less severe. A law which regulates conduct evenhandedly is constitutional, even though its operation may in practice curtail the maximum use of First Amendment freedoms, if the public interests which the measure is really calculated to serve outweigh its costs in curtailment of the volume of expression. Similarly, a narrowly-drawn restriction upon time, place or channel of expression is constitutional if justified by opposing public interests invaded by any act of speaking or any resort to a particular form of expression at the particular time or place, without reference to the ideas expressed or the identity of the one expressing them. The accepted test of constitutionality in all such cases is to inquire whether the regulation serves a "compelling" or "paramount" public interest which cannot be secured equally well by another, less restrictive measure. *Branzburg* v. *Hayes,* 408 U.S. 665, 682, 733-34 (1972); *United States* v. *O'Brien,* 391 U.S. 367, 377 (1968).[10]

necessity need not be as overwhelming as total suppression of a piece of information would require, but because the proscription turns upon the particular words and their consequences the test is more stringent than would otherwise be required.

[8] *E.g.*, New York Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964); Miller v. California, 413 U.S. 15, 23-24 (1973); Paris Adult Theatre I v. Slaton, 413 U.S. 49, 54 (1973).

[9] *Cf.* Hocking, Freedom of the Press 96-97 (1947).

[10] A wealth of precedent supports the principles stated in the text.

Non-discriminatory taxation or regulation which, by increasing costs or otherwise hampering business methods, may reduce opportunities for publication: Grosjean v. American Press Co., 297 U.S. 233, 250 (1936); Associated Press v. NLRB, 301 U.S. 103, 132-33 (1937); Associated Press v. United States, 326 U.S. 1 (1945); Oklahoma Press Publishing Co. v. Walling, 327 U.S. 186, 192-93 (1946); Breard v. City of Alexandria, 341 U.S. 622 (1951).

Symbolic conduct: United States v. O'Brien, 391 U.S. 367 (1968).

Expressive conduct carrying economic consequences: Giboney v. Empire Storage & Ice Co., 336 U.S. 490 (1949); Teamsters Union v. Vogt, Inc., 354 U.S. 284 (1957).

Regulation of time, place or manner of expression: Kovacs v. Cooper, 336 U.S. 77 (1949); Cameron v. Johnson, 390 U.S. 611 (1968); Cox v. Louisiana, 379 U.S. 559 (1965); Adderley v. Florida, 385 U.S. 39 (1966); Grayned v. City of Rockford, 408 U.S. 104 (1972).

Restraints upon political activities: United Public Workers v. Mitchell, 330 U.S. 75 (1947); Civil Service Commission v. Letter Carriers Union, 413 U.S. 548 (1973); Broadrick v. Oklahoma, 413 U.S. 601 (1973).

Other restraints upon freedom of association: Gibson v. Florida Leg. Inv. Comm., 372 U.S. 539 (1963); Shelton v. Tucker, 364 U.S. 479 (1960); Bates v. Little Rock, 361 U.S. 516 (1960); NAACP v. Alabama, 357 U.S. 449 (1958).

Cases dealing with speeches advocating overthrow of the government by force or similar violence are especially instructive. The present rule appears to be that advocacy of the use of force or law violation is punishable only "where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." Brandenburg v. Ohio, 395 U.S. 444, 447 (1969). The requirement of "imminent" lawless action limits the proscription in time and place, but because the only harm is the consequence of the particular ideas which the speaker wishes to express, the limitation must pass a more stringent test than would otherwise be appropriate. Mills v. Alabama, 384 U.S. 214 (1966), was such a case even though the prohibition against newspaper editors attacking or favoring a candidate or ballot proposition

The Attorney General (Br. pp. 27-28, 59-61) confuses the issue by suggesting that in order to uphold the constitutionality of the FECA, as amended, one must look to precedents sustaining regulatory measures addressed to the content of speech. E.g., *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367 (1969); *Civil Service Commission* v. *Letter Carriers Union*, 413 U.S. 548 (1973). Compare *Miami Herald Pub. Co.* v. *Tornillo*, 418 U.S. 241 (1974); *Mills* v. *Alabama*, 384 U.S. 214 (1966); *Brandenburg* v. *Ohio*, 395 U.S. 444 (1969). In each of those cases the challenge was to a law drawn upon the theory that certain ideas would have undesirable consequences if expressed at a particular time or place, or if not followed by opportunity for rebuttal. The constitutional test was very stringent because the law was concerned with what was said and was enacted because of its allegedly undesirable consequences. Similarly, in *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), the complaint charged the illegality of the substance of the truckers' publicity campaign, an allegation central to the railroads' case. The present case is altogether different. The FECA, as amended, is not concerned with what is said, how often it is said, or who speaks, except in the very marginal case where Section 608(e) calls for looking to the words to ascertain whether they relate to a clearly identified candidate and urge his election or defeat. The evils which Congress addressed are the corrosive influence of large contributions and expenditures of money — dangers in nowise resulting from the ideas expressed or the volume of

was limited to the day of an election. The statute treated the expression of certain ideas as contrary to the public interest; it was concerned with the character of the words and not with conduct and consequently failed to pass the very stringent constitutional test. Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969), also involved regulation based upon the ideas expressed. The regulation was upheld because of technological limits upon access to the electronic medium.

expression. For this reason, the cases above which sustain First Amendment claims are readily distinguishable, and the Court can—and we submit should—sustain the constitutionality of the limits upon contributions and expenditures without drawing upon such cases as sustain regulation of speech. The instant case requires no expression of opinion upon whether the Court would uphold the use of a balancing test or upon what test the Court would apply where particular ideas are singled out for regulation.

Appellants (Br. p. 47) likewise blur the critical distinction when they argue that under our view "a limitation on how much newspapers spend on publication — to hire reporters, investigate stories, and print editions — would not be a regulation of the newspaper itself." We make no such contention. Such a limitation would violate the First Amendment if the restriction rested upon a legislative notion that the evil to be remedied is the size of each edition, the volume of news coverage, the number of readers, the amount of influence the newspaper exerts, or any other consequence either of what is published or of the breadth of circulation. Cf. *Grosjean* v. *American Press. Co.*, 297 U.S. 233 (1936). On the other hand, the First Amendment would not prevent limiting expenditures which were the source of some substantial injury to an important public interest without regard to what information, ideas, or arguments the publisher chose to print. During wartime shortage, for example, Congress could place valid limits on expenditures for newsprint, even though the consequence was to curtail the circulation, the number of editions or the size of the paper. Similarly, if a publisher were to pour money into a newspaper with a view to a temporary reduction in price and increase in circulation which would destroy competitors and yield a future monopoly, the First Amendment would not be a defense to prosecution under the Sherman Act. Cf. *Associated Press*

v. *United States,* 326 U.S. 1 (1945); *Lorain Journal Co.* v. *United States,* 342 U.S. 143 (1951).

Thus, the opposing arguments cast no doubt upon the proposition that a law which regulates conduct even-handedly, because of the injury which that conduct does to the public interest, is constitutional if the public interests which the measure is really calculated to serve outweigh the costs in curtailment of opportunities for the full enjoyment of freedom of expression. Nor do they show that the question, insofar as it can be reduced to words, is not whether the regulation serves a "paramount" or "compelling" public purpose.

We make this submission in full awareness that the volume of political debate, the size of a candidate's audiences and the frequency with which they are reached may be substantially affected by the amounts of money that he is allowed to raise and spend for campaign purposes. The link does not require a more stringent constitutional test. The "compelling interest" test or some essentially similar formulation has been applied when the link was very much closer than here. In *United States* v. *O'Brien,* 391 U.S. 367 (1968), the act of tearing up a Selective Service card was itself the means of expression; no other means, in the speaker's judgment, would have spoken so dramatically to so many people. Similarly, in *Kovacs* v. *Cooper,* 336 U.S. 77 (1949), use of a raucus sound truck bore a direct relation to the size of the circle of auditors. Restrictions upon the time and place of speaking may also have important effect upon the attention a speech or demonstration can attract through the mass media. E.g., *Adderley* v. *Florida,* 385 U.S. 39 (1966). Balancing was permitted in those cases, despite the direct connection between the prohibited conduct and the effective use of speech, because each law focussed upon the evils flowing from the conduct, just as the FECA, as amended,

focusses upon the evil consequences of private political financing in the absence of ceilings upon the size of contributions and expenditures.

The extent to which a regulation of conduct curtails practical opportunities for the enjoyment of freedom of expression is one prime element in the constitutional equation. The other two are the weight of the public interests served by the measure and the availability of less restrictive measures. Accordingly, we turn to each of the elements successively in order to show that in the present case the balance requires the conclusion that the ceilings on contributions and expenditures are constitutional, not only on the face of the statute but as applied to any concrete situation presented by the record.

1. *The Ceilings upon Campaign Contributions and Expenditures Leave Generous Opportunities for Political Activity, Including the Exercise of Freedom of Speech.*

The restrictions imposed by Section 608(c) upon a candidate's aggregate expenditures leave ample opportunity to achieve public recognition and lay his case before the electorate even if he begins relatively unknown. For the statutory ceilings are so closely related to the expense of past campaigns as to demonstrate that their chief functions will be to prevent further rise and cut back wild extravagance.

In both 1972 and 1974 slightly over 97 percent of the election campaigns for Representative were conducted by major party candidates at less cost than the FECA expenditure ceiling. Less than 3 percent of the major party candidates in House races reported total expenditures exceeding the combined primary and general election ceil-

ings.[11] Findings IIA, ¶¶18, 40,[12] II J.A. 442, 448. In 1972, both Congressional candidates exceeded the spending limit in only 4 of 380 contested elections. Finding IIA, ¶3, II J.A. 269. In 1974, both candidates exceeded the limit in only one contest. Finding IIA, ¶5, II J.A. 326.

Spending was somewhat heavier in 1972 and 1974 election campaigns for Senator, but 75 percent of the candidates in each year spent less than the present FECA combined expenditure ceiling. Sixteen of those who spent more than the present ceiling were incumbents. Six were challengers to incumbents, four of whom were outspent by their incumbent opponents, and 13 were candidates in open races. Findings IIA, ¶¶28, 47, II J.A. 445, 450.[13]

Spending in past Presidential elections also indicates the reasonableness of those ceilings. In 1968 the Republican candidate raised and could have spent $29,600,000; the Democratic candidate, $13,600,000. 1969 Congressional Quarterly Almanac 1200. The $20,000,000 limit fixed by Section 608(c), plus the two cents per potential voter allowed national committees (§608(f)(2)), will set a ceiling of approximately $22,400,000. which is little above the average of the two. Comparison with 1972 is more difficult because there is no reliable way of breaking down the total figures for the primary and general election campaigns.

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[11] 1972 and 1974 Congressional and Senatorial candidates were required to report their campaign expenditures under the 1971 FECA. Primary expenditures were not then segregated from general election expenditures and it is not possible to make that separation now with reasonable accuracy. Therefore, we have compared total expenditures in those years with the combined FECA limits for primary and general elections.

[12] Only one of 439 minor party candidates in 1972 and 1974 House races exceeded the combined spending limit. That candidate, Allard Lowenstein of New York, first ran in the Democratic party primary, then ran in a court-ordered second primary, and after losing, ran as a Liberal in the general election. Findings IIA, ¶19, 40-41, II J.A. 448-49.

[13] No minor party candidate for Senate exceeded his State's limit in 1972 or 1974.

President Nixon reported spending $55,200,000. Senator McGovern reported $38,200,000. Under the FECA ceilings total spending of $36,200,000, including 20 percent for fundraising, would be permissible, in seeking nomination and election.

The relation between past experience and the present ceilings upon a candidate's aggregate expenditures is more than sufficient to show that the ceilings allow generous scope for purchasing facilities of mass communication more than ample for very wide political debate and publicity. Appellants have made no showing which undercuts the connection. The fact that there was heavier spending in a small number of closely contested elections shows only that candidates chose to spend all they could raise, not that such sums were necessary to full debate and publicity.

The effect of the $1,000 limit on individual contributions is more difficult to predict, but it is also much less directly linked to the total volume of political activity. The scattered evidence available tends to indicate that candidates will continue to raise sums sufficient for wide and vigorous campaigning. For example, preliminary reports of expenditures in the recent special election of a Senator from New Hampshire indicate that both candidates raised and spent very close to the statutory limit.

It is also worth noting that the link between contributions and expenditures, on the one hand, and the volume of campaign debate, on the other hand, may be looser than appellants ask the Court to suppose. The $1,000 limit on individual contributions and other ceilings upon separate gifts or expenditures obviously do not directly control the sums spent upon the media, although they will influence methods of political finance. The ceiling upon a candidate's aggregate expenditures may exert greater influence, but even that restriction leaves room for adjusting

campaign practices so as to reduce expenditures in areas other than travel and hiring media of mass communication. Less money might be spent in taking polls, for example. Candidates might choose to spend less on hiring advertising agencies and public relations men to "package the product," and rely more heavily upon volunteers. A candidate might even write some of his own speeches instead of paying the salary of a professional. More effort may go into organizing volunteers and activities, less into advertising candidates like soap and cigarettes. None of this to suggest that it is a function of FECA, as amended, to induce such changes; nor do we argue that they would be good or bad. Under the First Amendment it is not for government to judge the relative values of various forms of political debate. The point we urge is that the opportunities for changing campaign practices show that there is no fixed, one-for-one relationship between ceilings upon individual contributions and aggregate expenditures and the extent to which candidates and their supporters can enjoy the exercise of First Amendment rights.

For both reasons, we conclude that the ceilings upon contributions and expenditures allow every candidate very generous opportunity to use all facilities of mass communication in enjoying both freedom of political activity and freedom of speech.

2. *The Ceilings upon Contributions and Expenditures Promote Compelling Public Interests.*

A primary function of the ceilings on financial contributions and expenditures in political campaigns for election to federal office is to secure against the influence of money the honor and integrity of decisions in both the Legislative and Executive Branch.

Expenditures in election campaigns had been growing by

leaps and bounds.[14] The staggering cost increased the pressure to accept, and even to extort, very large gifts from men whose personal ambitions or business affairs would

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[14] The dramatic increase in expenditures in federal election campaigns is illustrated by the following charts.

PRESIDENTIAL CAMPAIGN EXPENDITURES

YEAR	Total Expenditures[a] (current dollars)[b] (in millions of $)	CPI[c] (1967 = base)[d]	Total Expenditures (1967 dollars)[e] (in millions of $)	Expenditure Index[f] (1952 = base)[d] (adjusted for inflation)
1952	11.6	79.5	14.6	100.0
1956	12.9	81.4	15.8	108.2
1960	19.9	88.7	22.4	153.4
1964	24.8	92.9	26.7	182.9
1968	44.2	104.2	42.4	290.0
1972	83.0	125.3	66.2	453.4

CONGRESSIONAL CAMPAIGN EXPENDITURES

YEAR	% increase from previous election yr.[g]	Expenditure Index[h] (1962 = base)[d]	CPI[c] (1967 = base)[d]	Expenditure Index[f] (1962 = base)[d] (adjusted for inflation)
1962	——	100.0	90.6	100.0
1964	+10	110.0	92.9	107.3
1966	+36	149.6	97.2	139.4
1968	+35	202.0	104.2	175.6
1970	+48	299.0	116.3	232.9
1972	+57	469.4	125.3	339.4
1974	+11	521.0	144.0[i]	327.8

[a] Finding I, ¶12, II J.A. 10. This column includes all direct campaign expenditures by national level Presidential and Party Committees for all Presidential nominees in the general election.
[b] "Current dollars" signifies that no adjustment for inflation has been made.
[c] Consumer Price Index (yearly average figures). Source: 1974 Statistical Abstract of the United States 411 (from U.S. Bureau of Labor Statistics, "Monthly Labor Review").
[d] The base year indicates the year for which the index equals 100.0.
[e] The figures in this column are adjusted for inflation.
[f] The expenditure index lists the campaign expenditures of each year as a percentage of the expenditures in the base year.
[g] Finding I, ¶94, II J.A. 53 (for 1962 through 1970 figures); Finding IIA, ¶34, II J.A. 447 (1972 total Congressional campaign expenditures); Finding IIA, ¶11, II J.A. 441 (1974 total Congressional campaign expenditures). Total Congressional campaign spending in 1970 was $42.4 million, 29 Congressional Quarterly Weekly 1572 (July 23, 1971).
[h] The expenditure index lists the campaign expenditures in each year as a percentage of the expenditures in the base year. The figures are not adjusted for inflation.
[i] Consumer Price Index for April, 1974.

be directly and substantially affected by government decisions which the successful candidate or political party could influence. As the role of money rises, so increases the obligation which the successful candidate or party owes to the large contributors who supply the means of victory. No one seriously denies either the sense of obligation or the pressure to make repayment in some form.[15] The larger the contribution, the greater the pressure to repay.

The kinds of advantage sought by large contributors and the degrees of "bargain and sale" vary over a wide range. A major solicitor of large contributions in 1972 acknowledged that an ambassadorial assignment was sold for a financial gift.[16] More often, perhaps, potentially large contributors wishing to be ambassadors have received only the euphemistic and possibly lawful assurance that after the election their names would be included on the list of "well-qualified" persons which the campaign official had been asked to submit to the appointing authority. In either event, the danger of corrupting influence is plain.

Many potential contributors of large campaign gifts have business interests likely to be affected by decisions of the Congress and federal agencies. The proportion has

[15] Senator Russell Long has stated, "[W]hen you are talking in terms of large campaign contributions . . . the distinction between a campaign contribution and a bribe is almost a hairline difference. . . ." Hearings on S.3496, Amendment No. 732, S.2006, S.2965, and S.3014 Before the Senate Comm. on Finance, 89th Cong., 2d Sess. 78 (1966). Senator Hubert Humphrey observed, "Those of us who run for office can profess that the campaign contributions we receive do not in any way control our votes, but I venture to say that not many believe it." 120 Cong. Rec. S.4553 (daily ed. March 27, 1974).

[16] Herbert Kalmbach pleaded guilty to promising an ambassadorship in return for a $100,000 contribution, and testified before a Senate Committee that similar arrangements had been made with another ambassadorial candidate. Final Report of the Senate Select Comm. on Presidential Campaign Activities, S. Rep. 93-981, pp. 497-98, 631 (1974); Findings I, ¶¶121-22, II J.A. 154.

risen sharply as federal taxation, regulation and spending have increased. The expectations of business contributors are various. A contributor of $100,000 during the 1972 election campaign testified that he was seeking not so much to help in the election as to secure the lifting of an order suspending him from taking construction contracts.[17] The timing of other large gifts suggests similar motivation. The Milk Producers Association, for example, pledged $2,000,000 to the 1972 campaign at the very moment at which the incumbent officials were deciding whether to raise the support price for milk.[18] Other large contributors testified they were moved by fear that their competitors would fare better than they in dealing with government agencies unless they matched their rivals' contributions.[19] Still others hope only to obtain the entree to the offices of high government officials charged with decisions affecting their business interests which they suppose — often quite erroneously — that they would otherwise lack, preferably an entree under the auspices of an influential figure in Congress, the White House or a political party, whose pleasure or displeasure could affect the responsible official.[20] Although no one can define the effect of such con-

[17] Hearings Before the Senate Select Comm. on Presidential Campaign Activities, 93d Cong., 1st Sess. 5336 (1973).

[18] Finding I, ¶158, II J.A. 254; Final Report of the Senate Select Comm. on Presidential Campaign Activities, S. Rep. 93-981; pp. 581, 592-93, 645-48, 664, 671 (1974).

[19] Hearings Before the Senate Select Comm. on Presidential Campaign Activities, 93d Cong., 1st Sess. 5495, 5514 (1973).

[20] One corporate executive explained, "I think all we were attempting to do was to assure ourselves of a forum to be heard .... [W]e felt we needed something that would be sort of a calling card, something that would get us in the door and make our point of view heard." *Id.* at 5442. A campaign fund-raiser testified, "[I]n return for that [$100,000] contribution it would be possible for me to arrange for several appointments with various people within the White House...." *Id.* at 7583. *See generally* Findings I, ¶¶159-64, II J.A. 254-55.

tacts with precision, the risk of improper influence, conscious or unconscious, is hardly open to question.

Section 608(c) strikes at the source of the above evils. Putting a limit upon the aggregate size of each candidate's campaign expenditures reduces not only the risk of corrupt practices but the pressure to raise huge sums from contributors expecting official favor as their reward. Section 608(b)(1) deals even more directly with the danger of undue influence by forbidding financial contributions large enough to be corrupting. The other ceilings implement these basic limitations. Since no restriction is imposed upon individual contributions to a standing political committee which has expenses for general purposes, such a committee is forbidden to contribute more than $5,000 to a candidate with respect to any single election. Section 608 (b)(2). Because experience showed that the proliferation of *ad hoc* political committees was a handy device for circumventing earlier regulation of campaign financing,[21] the privilege to give a candidate up to $5,000 is limited to committees with enough permanency and scope to have been registered for six months, to have received contributions from at least 50 persons, and either to be part of a State party organization or to have made contributions to five or more candidates for federal office. *Ibid.*

The ban against individual contributions in excess of $1000, standing alone, would give marked adavantage to candidates able to draw upon sizeable personal or family fortunes. Section 608(a)(1) counters this danger by limiting the total amount a candidate and his immediate family may "contribute" to his own campaign to $50,000 in the case of Presidential or Vice Presidential candidacy, to $35,000 in a Senatorial campaign and to $25,000 in running for Representative.

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[21] Finding I, ¶137, II J.A. 190.

The ceilings on individual contributions to a candidate and on candidate expenditures could be easily evaded if wealthy potential contributors were allowed to make unlimited direct personal expenditures in support of candidates. The function of Section 608(e)(1) is to close this gap by limiting expenditures by a person or group "relative to a clearly identified candidate . . . advocating the election or defeat of such candidate" to an additional $1000.[22]

The magnitude and value of the public interests served by these interrelated restrictions show that the justification is "paramount" or "compelling" in the constitutional sense. Earlier decisions, while not precisely in point, sustain this conclusion. *Civil Service Commission* v. *Letter Carriers Union,* 413 U.S. 548 (1973), held that the pursuit of such objectives justifies some curtailment of freedom of association even when personal activity rather than the mere transfer of money is restricted. See also *Broadrick* v. *Oklahoma,* 413 U.S. 601 (1973); *United Public Workers* v. *Mitchell,* 330 U.S. 75 (1947). *Burroughs* v. *United States,* 290 U.S. 534 (1934), sustained reporting requirements imposed to secure the integrity of elections. In *United States* v. *UAW,* 352 U.S. 567 (1957), the dissenting opinion delivered by Mr. Justice Douglas, in which Chief Justice Warren and Justice Black concurred, urged the unconstitutionality of a statute forbidding political expenditures by labor unions, but the opinion also stated that Congress has power to impose a general prohibition upon large contributions if it finds that they create risk of undue influence. 352 U.S. at 598, n. 2.[23]

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[22] Section 608(e)(1) is discussed in more detail at pp. 54-63 below.

[23] *See* Rosenthal, Federal Regulation of Campaign Finance: Some Constitutional Questions 21 (1971) ("Spending money is not the same as speech-making, even if the former may foster the latter."); Freund, Commentary in *id.* at 72-73 ("[J]ust as the

More specifically, the ceilings on contributions and expenditures will deter violation or circumvention of the long-standing prohibition against corporate contributions to federal political candidates. 18 U.S.C. § 610. A high proportion of the large financial contributors are corporate executives. A list of the large contributors kept in the White House after the 1972 election was partially arranged by the names of the corporations with which the

volume of sound may be limited by law, so the volume of dollars may be limited without violating the First Amendment.''); Bickel, Commentary in *id.* at 65 (''[R]egulating the giving of money is not the same as regulating speech.''); Note, Statutory Regulation of Political Campaign Funds, 66 Harv. L. Rev. 1259, 1266 (1953); Developments in the Law—Elections, 88 Harv. L. Rev. 1111, 1264-65 (1975). (''[L]imits (on individual contributions) do not appear to place substantial burdens upon free speech ... [T]he limited incursion on freedom of speech that results from limiting dollar amount appears to be amply justified.''); Nicholson, ''Campaign Financing and Equal Protection,'' 26 Stan. L. Rev. 815, 844-46 (1974) (supporting limits on individual contributions to political campaigns.); Comment, ''The Constitutionality of Restrictions on Individual Contributions to Candidates in Federal Elections,'' 122 U. Pa. L. Rev. 1609, 1610-14 (1974) (same); Barrow, ''Regulation of Campaign Funding and Spending for Federal Office,'' 5 U. Mich. J. L. Reform 159, 190 (1972) (same). *See also* United States v. CIO, 335 U.S. 106, 139 (1948) (Rutledge, J., concurring) (''There can be little doubt of Congress' power to regulate the making of political contributions and expenditures by labor unions, as well as by other organizations and individuals, in the interest of free and pure elections and the prevention of official corruption....''); United States v. Boyle, 482 F.2d 755, 763-64 (D.C. Cir.), *cert. denied*, 414 U.S 1076 (1973) (upholding constitutionality of §610 prohibition on political contributions by labor unions against First Amendment attack); United States v. Pipefitters Local 562, 434 F.2d 1116, 1122-1123 (8th Cir. 1970), *rev'd on other grounds*, 407 U.S. 385 (1972) (same); Egan v. United States, 137 F.2d 369 (8th Cir.), *cert. denied*, 320 U.S .788 (1943) (upholding constitutionality of prohibition on political contributions by public utility holding corporation). In addition to the federal government, eighteen states and the District of Columbia have enacted laws which limit the amount an individual may contribute to a political campaign. *See* Developments in the Law—Elections, 88 Harv. L. Rev. 1111, 1262 n. 158 & n. 159 (1975).

purported individual donors were associated.[24] Upon investigation, some of the contributions proved to have come from corporate funds.[25] Still others defeated the purpose, if not the letter, of the law. Individual officers could contribute out of their own funds but later receive equivalent bonuses from their corporations.[26] Even when there is no pre-arrangement or exact equivalent between contributions and reimbursement, there may be a vague though sufficient understanding that the executive's salary is set high enough to cover ''personal expenditures'' made for the benefit of the corporation, not excluding support for political candidates sympathetic to the corporation's interests.

Second, the ceilings imposed by the FECA amendments upon political contributions and expenditures serve the purpose of preserving public trust in the institutions of representative self-government. In *Civil Service Commission* v. *Letter Carriers Union*, 413 U.S. 548, 565 (1973), the Court observed:

> [I]t is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to

[24] ''[B]y having the checks [of corporate employees] made out directly to the candidate, but mailed to the F[inance] C[ommittee to] R[eelect the] P[resident] together . . . there would be no public record of contributions classified by the company of the donor while there would be such a record at FCRP.... In a letter mailed to over 150,000 corporate officers, Maurice Stans stated: 'Our committee's records of the combined contributions from you and your associates will maximize recognition of your group's support of the President.' '' Final Report of the Senate Select Comm. on Presidential Campaign Activities 545-46, 93d Cong., 2d Sess. (1974).

[25] Findings I, ¶112-17, II J.A. 148-53.

[26] *See e.g.*, Testimony of Matthew Clark, Jr., Hearings Before the Senate Select Comm. on Presidential Campaign Activities 93d Cong., 1st Sess. 5404-19 (1973); Testimony of Robert Bartlome, *Id.* at 5419-38.

be avoiding it, if confidence in the system of representative Government is not to be eroded to a disastrous extent.

Whatever the true motives of those who give or receive the money, public confidence in government is disastrously shaken by events such as the acceptance of a $2 million pledge from the Milk Producers Association by an Administration which concurrently grants an increase in the support price of milk;[27] by the approval of American Airlines' route applications shortly after a large corporate contribution to the party in power;[28] and by the settlement of antitrust litigation against International Telephone & Telegraph Corporation, shortly after an ITT subsidiary agreed to underwrite a large proportion of the expenses of that party's national convention.[29] Senators and Representatives knew from personal experience,[30] as well as testimony and published commentary,[31] the chilling cycle which begins with ever-larger campaign spending and ends in alienation of the

[27] *See* Final Report of the Senate Select Comm. on Presidential Campaign Activities, S. Rep. 93-981, 93d Cong., 2d Sess. 664 (1974). *Id.* at 645-48.

[28] *See* Hearings Before the Senate Select Comm. on Presidential Campaign Activities, 93d Cong., 1st Sess. 5495-514 (1973).

[29] *See id.* at 3372-75; Final Report of the Senate Select Comm. on Presidential Campaign Activities, S. Rep. 93-981, 93d Cong., 2d Sess. 127-29 (1974).

[30] *See* above. *See also,* testimony of Senator James Abourezk, Hearings on S.372 Before the Subcomm. on Privileges and Elections of the Senate Comm. on Rules and Administration, 93d Cong., 1st Sess. 207 (1973).

[31] Testimony of Louis Harris, Hearings on a Survey of Public Attitudes Before the Subcomm. on Intergovernmental Relations of the Senate Comm. on Government Operations, 93d Cong., 1st Sess. 6-8 (1973). *See also* Affidavit of James MacGregor Burns, Ex. H-1 to Proposed Findings of Fact of Defendants and Intervening Defendants Center for Public Financing of Elections, League of Women Voters of the United States, Clusen, Gregory, Jacknis, King, Noyes, Stern and Taft, at ¶¶6-8, 9-18; Affidavit of Arthur H. Miller, Ex. M-I to *Id.*, at ¶¶4, 5.

people from all aspects of the political process. Election victories by big spenders generate new pressure to spend still larger sums. The need for money sends candidates and their sponsors to large stockholders and corporate executives, most of whom have interests directly affected from time to time by governmental action.[32] Later, decisions favoring those interests are rendered by officials and governmental bodies subject to pressure from the successful candidates or the political party which received the donations and must keep in mind the next election. How often is the sequence one of cause and effect? The outsider cannot know. Even the participants who were sufficiently introspective to try to analyze their mental processes, might find it hard to discern the influence. The competitor who received the unfavorable decision will think it wise to take out an "insurance policy" in the next political campaign.[33] Citizens who observe this course of events need little cynicism to conclude that the world of politics and governments serves chiefly those with the "big money" that goes with political success.

Perhaps the cynicism of such businessmen and the alienation of such citizens rests, at least in some degree, upon

[32] "[W]here we had to look for the major source of money was to the people of wealth, the people of means, who were willing and able to contribute more of what they had in proportion to their wealth." Testimony of Maurice Stans, United States v. Mitchell and Stans, 73 Tr. 439, Tr. at 8204 (S.D.N.Y. April 18, 1974); "The role of interest groups and large contributors increases directly with the expense of campaigns." Hearings on H.R. 7612 and S.372 Before the Subcom. on Elections of the House Comm. on House Administration, 93d Cong., 1st Sess. 203 (1973).

[33] For example, George Spater, former Chairman of American Airlines, testified:

> "[M]ost contributions from the business community are not volunteered to seek competitive advantage but are made in response to pressure for fear of a competitive disadvantage that might result if they are not made. . . ." Hearings Before the Senate Select Comm. on Presidential Campaign Activities, 93d Cong., 1st Sess. 5495 (1973).

the failure to appreciate the full integrity of both candidates and officials. The precise extent of the discrepancy between image and reality is not important in adjudicating the present issue. As held in the *Letter Carriers'* case, dispelling both the danger and the appearance of corrosive influence, in order to preserve confidence in government of, by and for the people, is a paramount public purpose.

A third compelling public purpose of the interrelated ceilings is to open up the political process.[34] An apparent need for ever-heavier spending and correspondingly larger contributions would discourage the candidacies of men and women who lack great personal wealth or access to large contributors. The need would also deter individuals who might come forward but for unwillingness to put themselves in a position where they might have to choose later in the campaign between incurring personal obligation to a questionable contributor whose financial help was necessary to carry the day and letting down those who had already given him devoted personal assistance. The constitutional interest in removing financial barriers to candidacy has already been eloquently stated by the Court. *Bullock* v. *Carter,* 405 U.S. 134, 144 (1972); *Lubin* v. *Panish,* 415 U.S. 709, 718 (1974).

The ceilings will also increase the opportunity of less

[34] The policy of opening up the political process is also illustrated by provisions not at issue in this proceeding. For example, an amendment to 18 U.S.C. §610 prohibiting contributions and expenditures by corporations or labor organizations provides that prohibition "shall not include communications by a corporation to its stockholders and their families or by a labor organization to its members and their families on any subject; non-partisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families, or by a labor organization aimed at its members and their families; [or] the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization . . . ."

affluent citizens to engage in the meaningful exercise of their First Amendment rights. The pressure upon candidates to raise money from large contributors had become so great as to leave them little time for ordinary citizens.[35] The opportunities that wealthy potential donors previously enjoyed for pressing their views upon candidates and the pressure upon candidates to accede to them are dramatically illustrated by a letter which Appellant Mott wrote to Hubert H. Humphrey during the 1968 campaign for the Presidency:

> [M]ost of us ["key McCarthy supporters"] are reserving our donations to give towards the campaigns of "peace" candidates. . . . I came to the conclusion that the least we . . . could do for you would be to give you a hearing . . . . If we become "turned on" and enthusiastic towards your candidacy, we have the capacity to give $1,000,000 or more to your campaign — and raise twice or three times that amount. But we will each make our own individual judgments on the basis of how you answer our several questions and how you conduct your campaign in the coming weeks.[36]

Similarly, more nearly equal opportunity to petition the government for the redress of grievances will result from eliminating the large-scale financial support by which cam-

[35] *See* Statement of Joseph Cole, National Finance Chairman, Democratic National Committee, Hearings on H.R.7612 and S.372 Before the Subcomm. on Elections of the House Comm. on House Administration, 93d Cong., 1st Sess. 138 (1973); Statement of Senator Hollings, Hearings on S.382 Before the Subcomm. on Privileges and Elections of the Senate Comm. on Rules and Administration, 92d Cong., 1st Sess. 78 (1971). *See also* Finding I, ¶170, II J.A. 175.

[36] Mott Deposition, Ex. 5, *confirmed,* Hearings Before the Senate Select Comm. on Presidential Campaign Activities, 93d Cong., 1st Sess. 4336 (1973).

paign contributors sought entree under powerful auspices to executive departments and administrative agencies.[37]

The Attorney General treats these interests as if Congress were attempting to reduce the speech of the wealthy in order to make more room for the speech of those with lesser means (Br. pp. 52-54). We make no such argument, nor does the constitutionality of the statute depend upon any such treacherous ground. It is not for Congress to judge the relative values of different forms of speech or the relative claims of different speakers. The dangers to which we refer are the pressure upon candidates to accede to the wishes of wealthy potential contributors in order to obtain their money, not because of their words, and also the pressure to arrange meetings with government officials for those who have given money in order to repay the political debt.

In our view, therefore, the "compelling" nature and "paramount" value of the interests served by the package of ceilings on political contributions and expenditures are beyond serious doubt.

Appellants' contention that the ceilings upon contributions and expenditures have no "compelling" justification is primarily an effort to reargue the facts. Their brief (pp. 55-75) seeks to minimize the incidents brought to the attention of Congress, denies the danger of serious corruption, and attributes the enactment of the legislation to

[37] "[I]n return for that [$100,000] contribution it would be possible for me to arrange for several appointments with various people within the White House. . . ." Testimony of Herbert Kalmbach, Final Report of the Senate Select Comm. on Presidential Campaign Activities, S. Rep. No. 981, 93d Cong., 2d Sess. 593 (1974); "I think all we were attempting to do was to assure ourselves a forum to be heard. . . . [W]e felt we needed something that would be sort of a calling card, something that would get us in the door and make our point of view heard." Testimony of Orin Atkins, Chairman of the Board of Ashland Oil, Hearings Before the Senate Select Comm. on Presidential Campaign Activities, 93d Cong., 1st Sess. 5442 (1973).

hysteria induced by the Watergate investigations. The argument misreads events. Congress has proceeded with extraordinary care and deliberation. The history of congressional concern through the 1950's is recounted in *United States* v. *UAW*, 352 U.S. 567, 570-84 (1957) and in an appendix to the opinion of the court of appeals (J.S. App. 1589-93). Between 1966 and 1975 the entire subject was considered and reconsidered with a high level of public attention. During this period three major laws were enacted and later revised. Presidential Election Campaign Fund Act, P.L. 89-908, 80 Stat. 1587 (1966); Federal Election Campaign Act of 1971, P.L. 92-225, 86 Stat. 3 (1972); Subtitle H of the Internal Revenue Code, P.L. 92-178, 85 Stat. 562 (1971); Federal Election Campaign Act Amendments of 1974, P.L. 93-443, 88 Stat. 1263 (1975). There were elaborate hearings.[38] When Congress revisited the entire subject in 1973 and 1974 after observing the operation of earlier laws in the 1972 elections, there were three careful Senate reports, two reports by the Committee on Rules and Administration (S. Reps. 93-310, 93-689) and one by the Committee on Commerce (S. Rep. 93-170). An elaborate report was also filed by the House Committee on Administration (H.R. 93-1239). There was protracted

[38] Hearings Before the Subcomm. on Elections of the House Comm. on House Administration on H.R. 15317 and Related Bills to Revise the Federal Election Laws, 89th Cong., 2d Sess. (1966); Hearings Before the Senate Comm. on Finance on Various Proposals for Financing of Political Campaigns, 90th Cong., 1st Sess. (1967); Hearings Before the Subcomm. on Privileges and Elections of the Senate Comm. on Rules and Administration on Bills Proposing Amendments to and Improvements in the Federal Election Laws, 90th Cong., 1st Sess. (1967); Hearings Before the Subcomm. on Elections of the House Comm. on House Administration on H.R. 8284 to Limit Campaign Expenditures By or on Behalf of Candidates for Federal Elective Office and For Other Purposes, 92d Cong., 1st Sess. (1971); Hearings Before the Subcomm. on Elections of the House Comm. on House Administration on H.R. 7612 to Improve the Conduct and Regulation of Federal Election Campaign Activities and to Provide Public Financing for Such Campaigns, 93d Cong., 1st Sess. (1973).

debate in both chambers and an elaborate Conference Report (S. Rep. 93-1237). The present law represents the considered findings and deliberate judgment of the Congress.

Appellants' effort to reargue the underlying questions of fact and redebate the wisdom or folly of the measure misconceives the function of the Judiciary. The preferred place of First Amendment freedoms in the hierarchy of constitutional values requires the Court to examine the character of the purposes assigned to any legislation which may operate in a way that restricts opportunities for gaining the widest benefit from freedom of speech and association, so that it may determine whether the purposes are "paramount" or "compelling." See pp. 24-31 above. In the instant case, for example, it is for the Court to judge whether securing the integrity of government and public confidence therein is a sufficiently high objective to justify some interference with a candidate's enjoyment of opportunities for gaining the widest benefit from the exercise of freedom of speech. Similarly, it is a function of the Court to examine for itself the fit between the provisions of the statute and the assigned justifications. See pp. 50-54 below. If the commands which may result in curtailment of opportunities for expression or association are of a character demonstrably broader than required by the assigned justification, then the Court will judge the law unconstitutional.

Once these requirements are satisfied, the judicial role is limited. Judges do not sit as legislators to inquire into social, economic or political conditions in order to resolve questions of fact, to make judgments of proximity and degree upon the seriousness of the threat to the public welfare or the efficacy of the remedy, and then to decide whether, as legislators, they would vote for or against the measure. Quite possibly, judicial scrutiny of the facts must

be somewhat closer in cases involving First Amendment freedoms than under the Commerce Clause[39] or Fifth and Fourteenth Amendments,[40] in order to guard against circumvention of First Amendment guarantees, but we know of no case in which the Court has sifted a variety of data for the purpose of deciding whether it would reach the same conclusion as Congress upon the quantitative magnitude or urgency of an acknowledged danger, or upon the wisdom of the congressional remedy. The limit of the inquiry should be whether the judgments attributable to Congress rest upon an honest and solid foundation, rather than subterfuge or mere speculation. The only direct precedents indicate that the Court will not review congressional findings of fact even in cases under the First Amendment. *Communist Party* v. *Subversive Activities Control Board,* 367 U.S. 1, 94-95, 169-70 (1961). See also, *United States* v. *Robel,* 389 U.S. 258, 271, 285 (1967) (Brennan, J., concurring; White and Harlan, JJ., dissenting).

In the present case, in our judgment, the congressional findings of fact and appraisal of the degree of danger to compelling public interests are entirely correct. Even if that conclusion be debatable, the congressional assessments surely rest, as shown above, upon a solid foundation of

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[39] In upholding congressional enactments under the Commerce Clause and Section 5 of the Fourteenth Amendment the Court has consistently held that it is for Congress to determine the facts and weigh the various considerations, subject only to a requirement of rationality. Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 258, 261-62 (1964); Katzenbach v. McClung, 379 U.S. 294, 303-04 (1964); Katzenbach v. Morgan, 384 U.S. 641, 653, 656 (1966); Oregon v. Mitchell, 400 U.S. 112, 133, 248 (1970) (opinions of the Court and of Justices Brennan, White and Marshall dissenting).

[40] The same rule applies under the Due Process Clauses. Munn v. Illinois, 94 U.S. 113, 125 (1876); McLean v. Arkansas, 211 U.S. 539, 550-51 (1909). *See also* McGowan v. Maryland, 366 U.S. 420 426 (1961).

testimony and experience, to which both Senate and House gave long and careful consideration.

3. *The Compelling Purposes of the Ceilings upon Campaign Contributions and Expeditures Cannot Be Achieved by Less Restrictive Measures.*

The FECA and FECA Amendments of 1974 strike directly at the threats of corrupting financial influence upon the integrity of representative government. The method is no broader than the dangers to be met. By putting a limit upon each candidate's campaign expenditures, Section 608(c) stops the rising spiral of campaign costs and limits the pressure to raise more and more money from every possible source. Section 608(b)(1) deals more directly with the danger of improper financial influence by forbidding contributions large enough to be corrupting. The ceiling on over-all expenditures, standing alone, would not be sufficient to eliminate the risks of undue influence flowing from gratitude to large contributors. The ceilings upon individual gifts would be neither workable nor credible in political campaigns characterized by the massive spending invited by the absence of a limit on over-all expenditures. The subsidiary ceilings supplement the principal limits. Appellants suggest no adequate method of achieving the statutory purposes which would have less practical impact upon opportunities to get the maximum benefit from freedom of speech.[41]

[41] We are persuaded that substituting government appropriations for private financing of Congressional campaigns would serve the public interest still better than the present law but such a measure would necessarily contain restrictions very similar to those of which plaintiffs complain. Amendment 406 to S.372, 93d Cong., 1st Sess. (1973); S.2297, 93d Cong., 1st Sess. (1973); S.4196, 93d Cong., 2d Sess. (1974); S.564, 94th Cong., 1st Sess. (1975). In limiting public financing to Presidential elections, Congress not unreasonably chose to proceed one step at a time, gaining experience before it extended the remedy. The Court has consistently held that the Constitution leaves room for such legislative judgments. *See e.g.*, Williamson v. Lee Optical Co., 348 U.S. 483, 489 (1955); Dandridge v. Williams, 397 U.S. 471, 486-87 (1969); Geduldig v. Aiello, 417 U.S. 484, 495 (1973).

Disclosure laws are obviously inadequate. They may tend to deter successful candidates from blatantly serving the interests of large financial contributors in direct and public fashion. They do nothing to check the wild spending which produces the pressure to raise vast sums from large contributors with business interests subject to government regulation and nothing to reduce either the donor's expectation of benefit or the recipient's sense of obligation (even though undefined). Nor do disclosure laws open up the political process, halting the alienation of masses of citizens, nor preserve and rebuild faith in the political process.

Bribery laws are obviously inadequate to relieve candidates of the pressure to raise huge campaign funds from every possible source, including contributors expecting their money to influence legislative and executive decisions. The wealthy financial contributor and the recipient can be punished for bribery only if the one pays and the other receives the contribution in return for a promise of specific official action. The dangers to which the present legislation is addressed are more subtle. The donor may seek no commitment to a particular course of action or even to some unspecified favor. The successful candidate may nevertheless come under heavy pressure from his sense of political indebtedness plus his realization that he will need financial aid again in the next election. The successful candidate may be unwilling or unable to do more than pass word of the contributor's political importance along to other officials. At that point, the interplay of pressures and conscience becomes too complex for generalization except to say that adding first the influence of

huge sums of money and later the political pressure upon administrative and executive officials carries grave risk of corrupting individuals, politics and government. A public office is still a public trust. In government even more than in private life, there is need to protect the trustees and their beneficiaries not merely from the temptations of outright bribery but also from the complex pressures of conflicts of interest.

The suggestion that Congress should have listed only specified categories of contributions which create danger of improper influence is unworkable. The problem of exhaustive definition could not be solved without requiring investigations and proof so elaborate as to defeat enforcement. Neither candidate nor contributor can always tell what demands will be made for evidence of gratitude. Any workable list of "improper" contributions would necessarily refer to a few extrinsic proofs of impropriety, thus branding as morally reprehensible, and therefore unlawful, transactions which would be seen as wholly innocent if all the facts were known. Such draftsmanship carries its own dangers of discrimination and unfairness in relation to political activity. Congress could properly conclude that there was less danger of unfairness in the simple equality of putting all contributors and all candidates for the same office under one ceiling.

Appellants' criticisms of the exact dollar figures set by Congress ask the Court to substitute its judgment for that of Congress upon sundry questions of degree. That is not a judicial function, unless the limit is set so low as to be beyond solid defense. The ceilings on over-all expenditures are within the range supported by recent experience.[42] In fixing each dollar limit, effectiveness in promoting the congressional purposes had to be balanced against the risk of curtailing political debate. In some

[42] See pp. 31-34 above.

instances, adjustments had to be made in the interests of fairness and equality; for example, in setting a limit upon expenditures by a candidate and his immediate family.[43] The judicial inquiry into whether the public purposes of a statute regulating conduct could be adequately served by some measure having less tendency to limit the enjoyment of First Amendment freedoms goes only to the character of the legislation and its scope. Where, as here, the public needs are so compelling as to justify uniform, all-embracing restrictions upon the donation and use of financial power in political campaigns, it is for Congress alone to determine, within reasonable limits, the exact point at which the balance should be struck. See pp. 48-49 above.

Accordingly, we submit that any tendency of the ceilings upon campaign contributions and expenditures to limit the enjoyment of opportunities for freedom of speech and association is amply justified by the "compelling" and "paramount" public interests which the ceilings serve and which cannot be satisfied by less restrictive measures.

Appellants also complain (Br. pp. 93-94) that the ceilings should be more particular. The limit upon individual contributions, for example, is said to be unconstitutional because it is uniform, without variation according to the office which the candidate is seeking, the costs of the particular campaign, the identity of each donor, the situation of each recipient, etc. Similarly, appellants attack the fixing of a uniform formula for determining the ceiling on expenditures in all elections for Senator, and of a uniform ceiling in all elections for Representative in States having more than one Representative, regardless of the character of the particular district. The short answer is that the Constitution does not require the impossible, nor does it mandate the substitution of sophisticated complex-

[43] See pp. 72-73 below.

ity for a simple measure of equality. Many variables affect the cost of campaigning in different states and districts: geography, social and economic character, the kinds of media available, the level of prices, local political customs, etc. Congress could not investigate these factors in order to set a figure which would provide exactly equal "vote-influencing power" in every State and district. No formula will measure them. Use of population as measure regardless of State or district treats every candidate alike and avoids the risk of invidious discrimination by providing equality according to a direct and understandable measure: twelve cents for each person of voting age living in the State in elections of a Senator and $70,000 in congressional elections because the population of every district is substantially the same.

4. *The Limitation Imposed by Section 608(e) upon Independent Campaign Expenditures Not Authorized by a Candidate Is Constitutional as Enacted and as Applied to Any Situation Ripe for Adjudication.*

When the balance between the public needs served by a regulation of conduct and its restrictive effects upon practical opportunities for enjoyment of freedom of speech is otherwise close, it may be important to examine the proximity of the relation between the conduct regulated — here the use of large sums of money — and the truly personal enjoyment of liberty.

Most of the restrictions upon financial contributions and expenditures will have little effect upon anyone's personal speech or political activity. The effect of the overall ceiling upon the candidate's speech, or his spokesmen's, is that of any partial restriction upon the ability of a would-be speaker to gather a vast pool of money with which to

buy greater access to channels of mass communication. The effect upon the potential large contributor's personal enjoyment of freedom of expression is even more remote. The contributor seldom determines the use to which his money is put. Assuming the money to be pooled with all other receipts, some will go to pay rent, some to conduct polls, some to pay travel expenses or salaries, and some to cover the cost of public communications. The contributor seldom chooses the medium of expression or the character of the message. The words, with rare exceptions, are not his words; the ideas are not his thoughts. These characteristics of large financial contributions further strengthen our submission that the statutory restrictions upon size do not violate the First Amendment.

In some of its possible applications Section 608(e) presents a slightly different problem. Section 608(e) forbids any person to expend more than $1,000 in any one election to support a candidate, or to defeat his opponent, even without consulting the candidate. The language is tightly drawn so as not to discourage political discussion oriented towards public issues. The restriction applies only to publications "relative to a clearly identified candidate" and only to those "advocating the election or defeat" of that particular person. By the definition of "expenditure" in Section 591(f) Congress made certain that Section 608(e) would not interfere with any individual's personal activities in speaking, writing or canvassing for a candidate, or in performing other services, without using money to expand the reach of his words. Yet even with these limitations, Section 608(e) covers forms of conduct which are diverse when measured by their relation to personal enjoyment of freedom of expression. At one end of its range, Section 608(e) prohibits a wealthy supporter from spending more than $1,000 for such assistance as hiring an advertising agency to promote an "independent" cam-

paign for a candidate's benefit, *i.e.*, a campaign for which the candidate's authority was not obtained and which, therefore, would not count against his expenditure ceiling under Section 608(e)(2)(B). In their broadest reaches, the words of Section 608(e) appear also to bar an outlay of more than $1,000 to broadcast one's own speech in support of a candidate, or of more than $1,500 for travel expenses incurred in making speeches.[44] The former restriction has no more affect upon personal enjoyment of freedom of speech than the ceiling upon contributions. The latter restriction upon the individual's use of money would proximately affect his personal enjoyment of opportunities to publish his own thoughts.

The court of appeals, after giving Section 608(e) a narrow interpretation, sustained it as "a loophole closing provision." (J.S. App. 1530) We urge that the ruling is correct in terms of the facial constitutionality of Section 608(e) and as it is applicable to any situation presented in the instant case. We believe that even the hypothetical applications would be constitutional but the question, being closer, should be reserved for the future.

The court of appeals rightly discerned the function of Section 608(e). Although the ceilings upon contributions and aggregate expenditures would be useful by themselves, Congress realized that their efficacy would be reduced without some limitation upon a variety of independent expenditures. Experience under earlier laws regulating the financing of political campaigns had convincingly demonstrated the danger of circumvention, evasion and outright violation.[45] The $1,000 ceiling upon individual contributions and the over-all ceiling upon ex-

[44] Section 591(e) exempts from the definition of expenditure the first $500 of an individual's unreimbursed travel expenses. In addition, an individual is allowed up to $1,000 of independent expenditures on behalf of a candidate.

[45] See J.S. App. 1512; Findings I, ¶¶139, 139-43, II J.A. 190-92.

penditures by or on behalf of a candidate could easily be circumvented, if left to stand alone, by massive expenditures for campaign advertising and other forms of mass communication made in support of a candidate without any provable communication between the supporter or group of supporters and the candidate or his agents. A wealthy, potential contributor, for example, instead of giving $100,000 to a candidate for his campaign, might spend the sum for newspaper or billboard advertising, the broadcast of radio and television "spots," the distribution of campaign literature, etc. If the expenditure were made without some kind of advance communication between the candidate and his benefactor, its effectiveness might be reduced because of the lack of coordination with other outlays, but no great amount of imagination is required to reduce the difficulty. The wealthy supporter might copy newspaper advertisements used earlier in the campaign or in other cities. He might buy television time to rebroadcast earlier "spots" or film clips. The benefactor might even let the candidate's manager know early in the campaign that he would spend his $100,000 on advertising in a particular city, handled by a named agency with political experience, yet he could still avoid obtaining the authority which would make the expenditure attributable to the candidate under Section 608(e)(2)(B) by loudly asserting that he would pursue this course regardless of whether the candidate approved or objected to his independent undertaking.

Numerous independent expenditures of this character would make mockery of the effort to limit campaign spending. They would create many of the dangers of abuse inherent in vast expenditures on behalf of candidates and in large financial contributions. Members of the public might well doubt the bona fides of claims of independence. Opposing candidates would feel heavy pressure to match

the financial outlay lest they lose the election. This class of independent expenditures, moreover, involves no more personal exercise of freedom of expression than contributions for the same purposes. Congress was well aware of the danger and repeatedly emphasized the need to close an obvious loophole. S. Rep. 93-170, 93d Cong., 1st Sess. 71 (1973); H.R. Rep. 93-1239, pp. 6-7 (1974); S. Rep. 93-310, pp. 12-13 (1973); S. Rep. 93-1237, pp. 56-57 (1974).

Given the need for limiting some kinds of ostensibly independent expenditures and the desire not to interfere with truly personal activities (as distinguished from financial assistance), the problem becomes one of drawing lines. Two solutions present themselves: (i) to distinguish between independent expenditures which serve essentially the same campaign functions as contributions, on the one hand, and, on the other hand, independent expenditures which are incidental to the individual's personal exercise of freedom of expression; or (ii) to draw the line between truly personal activity, on one side, and spending money, on the other (except for incidental expenses so small as to pose no threat to the basic limitations).

Congress, with full concern for the questions of personal liberty,[46] chose the second course. The definition of "ex-

[46] "Admittedly, expenditures made directly by an individual to urge support of a candidate pose First Amendment issues more vividly than do financial contributions to a campaign fund. Nevertheless, to prohibit a $60,000 direct contribution to be used for a TV spot commercial but then to permit the would-be contributor to purchase the time himself, and place a commercial endorsing the candidate, would exalt constitutional form over substance. Your Committee does not believe the First Amendment requires such a wooden construction. If Congress may, consistently with the First Amendment, limit contributions to preserve the integrity of the electoral process, then it also can constitutionally limit independent expenditures in order to make the contribution limits effective." S. Rep. 93-689, p. ___ (1974); "The committee is mindful that an absolute proscription of independent campaign-related spending may well offend the guarantees of the First Amendment and would be poor public policy in inhibiting the free expression of views on vital issues. However, it is believed that a reasonable limitation on such spending, in the context of an overall effort to maintain the integrity of the electoral process is feasible and Constitutionally permissible. . . . The committee is convinced that this approach makes possible the adequate presentation of candidate-related views by independent groups and at the same time safeguards the integrity of the candidate spending limits. In this way, the bill effectively reconciles the interests of Congress in promoting both free speech and the effective regulation of Federal election campaigns." H.R. Rep. 93-1239, p. 6 (1974).

penditure" in Section 591(f) excludes all personal political activities such as speaking, writing or canvassing for a candidate, or performing other services. In order to facilitate truly personal activity Congress provided that the payment of incidental expenses for food or travel should be exempt from Section 608(e), up to $500. But, with this exception, Section 608(e) reaches all outlays sufficiently tied to a specified candidate and specifically aimed at bringing about his election.

The congressional choice is sustained by four persuasive considerations:

First, it is extremely difficult to draw a fair and clear-cut line between the expenditure of money in connection with truly personal political activity and the mere purchase of services or use of a medium of mass communication. Buying a full page of advertising space in *The New York Times* to publish a letter appealing for the election of a named candidate may fall on the "personal" side of the line. Buying television spots to rebroadcast film clips made by the candidate is pretty clearly the mere expenditure of money. But the full-page advertisement might be one previously used by the candidate and slightly revised by the purchaser of advertising space, or it might be drafted by the purchaser and thoroughly rewritten by a professional writer of advertising copy. The page might be used to display a large picture of the candidate together with a few slogans chosen by his benefactor from the candidate's

own publicity. Joint expenditures by a few individuals would raise other borderline questions.[47] The mixture of "money purchase" and "personal involvement" is susceptible of infinite variation. So far as we can discern, if Congress had chosen this alternative, the draftsman could have done no more than articulate the abstract principle and leave its precise application to case-by-case decision.

Second, the danger that Section 608(e) will substantially restrict personal political activities seems largely, if not wholly, hypothetical. No appellant alleges that he desires to spend more than $1,500 to promote in behalf of a candidate activities of the kind we characterize as "personal." None shows, in concrete instance, that he will lose the benefit of such activity and expenditure if Section 608(e) is enforced. It is difficult, moreover, to recall any significant number of individuals other than office-holders or prospective political candidates who have ever expended more than $1,500 of their personal funds in order to speak for or against a clearly identified candidate without the invitation or other authorization which would take the expenditure out of Section 608(e) by making it chargeable against the candidate's expenditure ceiling.[48] Considerably more sup-

[47] It is not clear whether a number of individuals who combine to purchase broadcasting time or a newspaper advertisement costing more than $1,000 on a single occasion are subject to Section 608(e). Section 608(e) prohibits any "person" from making any expenditures in excess of $1,000. Section 591(g) defines "person" to include any "commission, association, corporation or any other organization or group of persons." It would seem entirely probable to interpret the words "group of persons" under these circumstances to mean only a group having some more lasting existence than combining resources for a single expenditure. The Federal Election Committee has had no occasion to rule upon this question, but in interpreting the discovery sections, it has tentatively ruled that coming together for the purpose of purchasing a single advertisement does not constitute a political committee. 40 Fed. Reg. 44701 (Sept. 29, 1975).

[48] An individual's expenditures made independently of a candidate are not charged against the candidate's expenditure limit. However, under Section 608(e)(2)(B), an expenditure made on behalf of a candidate with the candidate's or his agent's authorization is charged against the candidate's ceiling. If a candidate invited the individual to speak on his behalf, that invitation would be an authorization, and would take the expenditure out of Section 608(e).

porters buy advertising space, but here the element of personal activity is inconsequential.

Third, past and present office-holders would almost surely form a very large proportion of the small number of individuals who might spend more than $1,000 of their own money making uninvited speeches in support of another candidate. Such speeches increase the public exposure of the office-holder or prospective future candidate who makes them. The chief consequence of shifting the line to allow independent expenditures in aid of truly personal activities, therefore, would be to increase the advantage of candidates who know public office-holders with large personal means, and of such office-holders in gaining exposure for their own political purposes.

Fourth, even the limit on spending more than $1,000 to propagate one's own speech or writing in support of a clearly identified candidate is somewhat less of an invasion of personal liberty than it initially seems. The liberty is not one that more than a very small fraction of the people can afford to exercise. There is no restriction, as we have said, upon the personal activities not requiring large sums of money, which are open to all. There is also no restriction upon expenditures to promote the widest discussion of particular political causes without specifically tying the advocacy to a clearly identified candidate.

Under these circumstances, it would seem quite wrong to attempt to tear the few most extreme imaginable applications of Section 608(e) out of the continuum of spending in order to ask whether the isolated instances would carry by themselves such threat to the public welfare as to justify thus restricting the ability to buy facilities for

gaining the maximum benefit from freedom of speech. The contribution which the extreme instances make to the workability of the entire plan and the fairness of drawing the line at the point chosen are major additional elements of justification. When a line has to be drawn and is drawn at the point which Congress could well judge to be clearer and fairer than any other, the critical question is whether the purposes served by the prohibition of the whole class of activities justify the resulting diminution of practical opportunities for the maximum enjoyment of freedom of speech. In this case, the overall justification is more than adequate, for the reasons stated at pp. 34-50 above. Consequently, if the question is here, Section 608(e) should be held constitutional in its farthest conceivable reaches.

But that question need not, and therefore should not, be decided in the present case. Neither the pleadings nor the proof names any person who wishes to make such outlays, much less describes the circumstances and mixture of financial expenditure and personal activity involved. Appellant Mott alleges that he "has made expenditures on behalf of clearly identified candidates but independent of such candidates in excess of $4,000 and intends to do so in the future." (I J.A. 39). The allegation gives no information about the character of his independent activities. His reports filed under the earlier law indicate that he expended in the neighborhood of $17,000 in publicizing his views about clearly identified candidates, all of which went to an advertising agency. There is no indication of how the copy was prepared. Mr. Mott's affidavit gives no more concrete information about his activities or intentions. At this stage, therefore, the problem raised by some possible applications of Section 608(e) is hypothetical; the most difficult of the imaginable constitutional questions may never arise.

Such questions do not have to be decided hypothetically

because even a decision against constitutionality in these instances would not render Section 608(e) unconstitutional on its face. Section 608(e) applies to a broad range of expenditures involving neither speech nor other personal political activities on the part of the spender. In most of the applications now foreseeable the element of personal speech or association is very small. Throughout most of its range, therefore, Section 608(e) is constitutional for the reasons stated in discussing the ceilings on individual contributions and overall expenditures (pp. 22-54 above). Under these circumstances the Court should reject the facial attack upon grounds of overbreadth and avoid the unnecessary decision of hypothetical questions. For the case is one where conduct, *i.e.*, spending money, is involved and the overbreadth, if any, is insubstantial judged in relation to the statute's plainly legitimate sweep. *Broadrick* v. *Oklahoma*, 413 U.S. 601, 615 (1973); *California* v. *LaRue*, 409 U.S. 109, 116 (1972).

C. *The Limitations Upon Financial Contributions And Expenditures Are Not Inherently Discriminatory In A Constitutional Sense.*

The limitations imposed by Section 608(c) of 18 U.S.C. upon aggregate campaign expenditures by or on behalf of candidates for federal office apply alike to each and every candidate for the same office. Section 608(c) draws no distinctions between persons, political parties, social or economic organizations, or other groups. It does not favor or disfavor any political opinion or ideology. In terms, the provisions imposing the ceilings are as evenhanded as the words can be.

Similarly, the limitations imposed by Sections 608(a) and (e) upon individual contributions and expenditures apply equally to each and every candidate for the same office. They too make no invidious distinctions, and prefer

no economic or political opinion or group. A few special categories, such as expenditures from a candidate's immediate family resources (Section 608(a)(1)), were required by considerations of fairness or practicality. Lines such as those in Section 608(e) had to be drawn between the prohibited and the permitted even though the kinds of financial practices leading to dangerous abuses sometimes shade by very gradual degrees into desirable participation in self-government.[49] None of the classifications is drawn in terms of political ideology or affiliation. None involves hostile or invidious discrimination.

Appellants nevertheless charge many varieties of unconstitutional discrimination. We deal first with the allegation that the ceilings on individual contributions and candidates' expenditures discriminate in favor of incumbents against challengers (pp. 64-71 below). We then turn to the other claims of unconstitutional discrimination (pp. 71-73 below).

1. *The Ceilings Upon Individual Contributions and Candidates' Expenditures Do Not Discriminate Against Any Type of Candidate or Party, Either Inherently or Insofar as Their Operation Can Now Be Projected.*

The ceilings imposed by Section 608 apply alike to all candidates and financial contributors without regard to party or other form of political sentiment. The ceilings apply equally to challengers and incumbents. Neither express language nor euphemism nor disingenuous circumlocution introduces any form of differentiation. There is no argument, as we understand appellants' brief, that Section 608 results in any systematic discrimination always

[49] Section 608(e) is discussed in more detail at pp. 54-63 above.

favoring incumbents and established parties as a class.

Rather, the contention is that challengers and new parties should not be subject to the same financial rules as others because they have more need for massive spending and wealthy contributors in order to win election through the power of money.

One branch of this contention is the complaint that other laws and facts of political life result in discrimination because incumbent Senators and Representatives enjoy methods of communicating with voters and bringing themselves to public attention which are not available to those who run against them. Congressional staff, franked mail, congressional-recording studios, office space, the ability to hold hearings within the constituency and like responsibilities and perquisites of office, including the ability to make news, are cited as examples.

These facilities are provided in order to enable Senators and Representatives to perform their duties, including the duty to assist constituents in dealing with the executive departments and administrative agencies, provide them with information published by the government, and keep them informed about the conduct of public business. No one denies the propriety of these functions. Staff assistants and other facilities are requisite if the job is to be done well.

It is equally plain that outstanding service as a Senator or Representative brings greater public recognition and helps enormously in a campaign for reelection. The performance of official duty, whether individually or through official staff and facilities, inevitably has this twofold aspect. Appellants can hardly mean to argue that members of Congress must blind themselves to what all others know, or that the Constitution requires the government to provide challengers with some offsetting method of attracting ballots.

Rather, the implication seems to be that the staff and facilities provided to Congressmen are not really means of performing public duties but campaign facilities over and above the ceiling upon aggregate expenditures, which challengers have to purchase. In framing the FECA Congress took steps to prevent such abuse. Section 434(d) of 2 U.S.C. indicates that use of congressional television and recording studios is to be treated as an expenditure in election years. Chapter 32 of 39 U.S.C. limits the use of franked mail.

The drawing of lines between the proper performance of public duties with incidental political gains and the abuse of facilities for political purposes is undeniably difficult. Abuse may occur. That problem, however, is not before the Court in this case for three reasons:

First, appellants have proved no abuse, general or particular. So far as the record shows, the staff and facilities available to Congressman have been used only in the performance of their official duties, and any electoral advantages have flowed from good performance.

Second, if the legislation providing the frank and other public facilities is discriminatory or administered in a discriminatory fashion, the discrimination should be attacked directly in an appropriate action. Congress was required to treat all candidates equally in the FECA; it was not required to frame that Act so as to offset all other advantages or disadvantages of particular classes of candidates, whether proper or improper.

Third, no appellant is a victim of the discrimination because none is a challenger to an incumbent or alleges that he wishes to challenge an incumbent.

The second branch of appellants' argument — that the Constitution forbids applying the same limits upon contributions and expenditures to all candidates for the same office because uniform treatment operates to the advantage

of incumbents — is extrapolated by economic and political theory from statistics showing the expenditures in the 1972 and 1974 elections. The Brief for Intervening Appellees, pp. 112-29, 143-51, demonstrates the theoretical and factual errors in this analysis and then shows that, if any reliable conclusion can be drawn from the figures, it is that the ceilings do challengers to incumbents more good than harm. The court below concluded that any forecast would be much too speculative to warrant invalidating Section 608 (J.S. App. 1540-41). The correctness of that conclusion seems beyond question when one reflects that appellants' predictions are drawn from a statistically small sample in almost complete ignorance of all the important variables that affect the outcome of elections.[49a] That court's conclusion also implicitly recognizes the sound and fundamental principle that the duty of judicial review does not call upon the courts to conduct elaborate factual inquiries into matters proper for congressional determination in order to draw their own inferences and then to uphold or invalidate the act of Congress according to the preponderance of the evidence concerning its future effects. See pp. 48-50 above. For both reasons, we content ourselves with three short answers to appellants' contention:

First, appellants' claim only that the ceilings upon the size of financial contributions and a candidate's aggregate expenditures will operate in practice to "discriminate *generally* against challengers and *generally* in favor of incumbents." (Br. p. 94, emphasis added). The word

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[49a] For example, in 1972 and 1974 House races, a total of forty-eight incumbents were unseated in the general election. Of these, fourteen outspent their successful challengers by more than 15 percent; nineteen were themselves similarly outspent; and in fifteen races, the losing incumbent and the winning challenger expended approximately equal sums. Findings IIA, ¶¶3, 5, II J.A. 269-318, 326-86. We submit that the only significance of such figures is to demonstrate that none of the figuring demonstrates any useful conclusion.

"generally" veils the wide variations in the probable effects of the ceilings. Sometimes the ceilings will work to the advantage of a challenger. On other occasions they may benefit an incumbent. This much is undeniable. In any given case in which the ceiling on aggregate expenditures is high enough to allow a candidate an adequate opportunity to present himself to the public, the effect of the ceiling will depend upon two factors: (1) the relative ability of the candidates to raise and spend money in excess of the ceiling; (2) the relative gain to the candidates of spending each additional dollar. In any given case, these two forces may coincide or they may cut in opposite directions with the net effect depending upon which is the stronger. If the candidates have equal capacity to raise money for expenditures in excess of the ceiling, the restriction will bear hardest upon the one who would gain the most from each additional dollar expended. If the candidates have equal use for money, the ceilings will bear hardest upon the one who could otherwise raise and spend the largest sum. Individuals differ very widely in their ability to raise money as well as in their need to spend it. Assuming that appellants are right in asserting that the *average* marginal utility of a dollar expended is greater for challengers as a class than incumbents, still their argument proves nothing about the total effect of the ceilings because they fail to show that the challengers' average ability to raise money is not so greatly inferior to the average ability of incumbents as to more than offset any greater average need for spending.

Second, appellants show no more than that those who were gaining most from conduct injurious to the public interest will lose most from its prohibition. The statute sets up no classification except the prohibition uniformly applicable to all persons. Thus far, no question of equal

protection is raised.[50] Appellants then divide candidates into two classes, incumbents and challengers, and seek to show statistically that somewhat more candidates disadvantaged by the statute will fall in the second class than in the first. But one cannot make a case of unconstitutional discrimination by this kind of statistical prediction. When a statute is even-handed in its terms and actually disadvantages some members of both classes, proof of a denial of equal protection requires a stronger showing of systematic discrimination in the practical operation of the law than that on a statistical average it happens to bear somewhat harder upon one class than the other. *Jefferson* v. *Hackney*, 406 U.S. 535, 548, 575-76 (1972); *James* v. *Valtierra*, 402 U.S. 137 (1971).

Very few statutes bear with equal weight upon every person affected. An increase in the statutory minimum wage may put a firm which makes intensive use of labor under a serious disadvantage in competing with a rival manufacturer who has invested heavily in labor-saving equipment. An increase in corporate taxes might force

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[50] Every constitutional challenge to a statutory prohibition of some particular kind of conduct can be framed in the terminology of equal protection by asserting that the State's interest in prohibiting the conduct is insufficient to justify the State in treating those who engage in the conduct differently from other persons. The customary analysis is in terms of justification for the invasion of liberty or property. Nothing is changed by resorting to the language of equal protection because the "classification" can always be supported upon the same ground that justifies the invasion of liberty or property.

In the present case, we have shown that the interference with political opportunities of some candidates which results from the ceiling upon financial expenditures is justified by the "compelling" public interests which the limitations serve. See pp. _____ above. Proof of some slight tendency to limit the political effectiveness of more challengers than incumbents could have significance only if that balance were much closer than it is. Talk of discrimination in the practical operation of these even-handed rules raises no additional issue.

some Democratic newspapers to suspend publication yet scarcely affect their Republican rivals. The statute prohibiting federal officials from soliciting political contributions from their subordinates probably "discriminates" against the candidates of a party already in power for a long period. None of these laws, however, raises a problem of "discrimination" in the constitutional sense.

Third, there is not the slightest reason for measuring equality in the constitutional sense by appellants' theory of the marginal utility of a campaign dollar. The Senator quoted by appellants (Br. p. 99) who said that to allow challengers to spend more than incumbents would defeat the bill doubtless realized that such a measure would be universally perceived to be unequal. Translated into simple words, the marginal utility argument asserts that the constitutional ideal of equality requires the government to allow the otherwise weaker candidate to spend the largest sums of money in an election, if he can, in order to offset his other deficiencies. If he cannot speak effectively, he must have more money to hire professional entertainers. If he is ill-informed upon public issues, he must be allowed to spend more for ghost-writers. Because public recognition pretty regularly accompanies incumbency, fair and equal ceilings upon expenditures must allow a challenger a generous opportunity to present himself to the public. The present statutory ceilings are more than ample. Once that purpose is served, discrimination is avoided by treating the rivals exactly alike in the segment of their activities to which the law applies while leaving them where they were in every other aspect of their appeal to the electorate.

2. *The Other Statutory Distinctions Are Just and Reasonable.*

Appellants challenge two sorts of minor statutory provision as unconstitutionally discriminatory.

(1) One set of charges alleges discrimination in favor of candidates with the support of organized political committees or of a national political party, as opposed to candidates without those forms of organized support. Section 608(b)(2) allows a political committee registered for six months, which has received contributions from fifty persons and has contributed to five or more candidates for federal office, to contribute up to $5,000 to any candidate. Section 608(f) allows the national committee of a political party to expend two cents per potential voter in a Presidential election, and the national committee or a state committee to expend the same sum in elections to the Senate or House of Representatives.

Political parties and the organization which binds them together play major roles in our national political life. They provide both continuity and a degree of national coherence and unity. They furnish means of reaching concensus upon major policies and also important machinery for selecting candidates, even conducting through State and local organizations the caucuses or primaries necessary to choose candidates for office. See e.g., *Ray* v. *Blair,* 343 U.S. 214, 220-222 (1952); *American Party of Texas* v. *White,* 415 U.S. 767 (1974).

To distinguish between organizations that perform these functions and groups which make no similar contributions to our national political life is merely to permit party organizations to continue to perform their traditional functions, in the same manner as in the past but subject to limits upon the size of the contributions to candidates and of expenditures in their behalf. If party organizations

were deprived of this role entirely, they might shrivel and die. Any informal group is free to set up an organization which has the modicum of structure necessary to qualify as a national party with a national committee, or to qualify on a smaller scale as a program committee. The slight restriction imposed by Section 608(b)(2) — the requirement of six months registration as a political committee, contributions from 50 individuals and support of five candidates — is necessary, as the Court below observed (J.S. App. 1536), to prevent the proliferation of dummy committees which made mockery of the earlier Corrupt Practices Act. The differentiations resulting from Sections 608(b)(2) and 608(f) are therefore well within constitutional limits as heretofore expounded. Cf. *Jenness* v. *Fortson*, 403 U.S. 431 (1971); *Storer* v. *Brown*, 415 U.S. 724 (1974); *American Party of Texas* v. *White*, 415 U.S. 767 (1974).

Appellants also assert that Section 608(a) introduces an unconstitutional discrimination by allowing a candidate and his immediate family to expend much larger sums in an effort to win an election than another person would be allowed to expend or contribute.[50a] The imposition of the ceilings brings about greater equality by reducing the advantage of wealth as among persons seeking public office. In the absence of Section 608(a)(1), there would be no ceiling upon the contribution which a candidate and his immediate family might make to his own election. To distinguish between immediate family and other persons is to acknowledge a distinction in emotional concern recognized by all persons. Furthermore, the danger that a successful

[50a] The term immediate family means "a candidate's spouse, and any parent, child, grandparent, brother, and sister of the candidate, and the spouses of such persons." §608(a)(3). The ceiling is $50,000 in the case of a candidate for President or Vice President, $35,000 in the case of a candidate for Senator or Representative from a State which has only one representative or $25,000 for Representative from any other State.

candidate will be subject to improper influence from members of his immediate family because of their expenditures on his behalf is much less than in the case of contributions or expenditures by outsiders. Not only is the distinction reasonable, but it works no systemic differentiation for or against any class of candidates or other persons. Appellants rely upon a supposititious comparison between a candidate whose family's wealth permits an expenditure up to the applicable $25,000, $35,000 or $50,000 ceiling and a candidate who enjoys no family wealth but who would easily obtain that sum from a rich contributor. While this situation could conceivably develop, one can also imagine cases in which the candidate with family wealth would also have much greater access to wealthy contributors. Cases of the latter kind seem far more likely than cases of the former. Such abstract speculation does not make out a case of invidious and therefore unconstitutional discrimination.

II

The Requirements for Reporting and Disclosure of Campaign Contributions and Expenditures Are Constitutional on Their Face and Insofar as Their Operation Can Be Projected Upon This Record.

The Federal Election Campaign Act of 1971 and the Federal Election Campaign Act Amendments of 1974 tighten earlier federal requirements consolidated in the Corrupt Practices Act of 1925, 43 Stat. 1070 (1925), with respect to the maintenance of records and the disclosure of campaign contributions and expenditures. Section 431(d) now defines a "political committee" to include any group of persons which receives "contributions" or makes "expenditures" exceeding $1,000 for the purpose of influencing

the nomination or election of any person to federal office. Section 432(f) requires every candidate to name a principal campaign committee. Sections 432(c) and (d) require every political committee to keep an exact record of:

> (i) all contributions made to it in excess of $10 with the date, amount and name of the contributor and, if the contribution is more than $100, his occupation and principal place of business.
>
> (ii) all expenditures made by the committee including the date and amount of the payment, a statement of its purposes in the form of a receipted bill containing full particulars and the address of the payee.

The records are to be made accessible to the Federal Election Commission which is given the duty of auditing political committee reports. § 438(a)(8).

Section 434 requires each political committee and each candidate to file with the Federal Election Commission, at specified times, detailed financial reports showing assets, receipts, transfers to or from other political committees, and expenditures. The reports must include for each contribution in excess of $100 a statement of the amount and date of the contribution, the full name and mailing address of the contributor, and the aggregate amount of all contributions received from that contributor. On the expenditures side, the report must include a statement of all expenditures showing the amount, date and purpose of each, and the names of the payee and of the candidate on whose behalf the expenditure was made. Finally, the reports are to include a statement of debts and like obligations owed by or to the committee.

These provisions serve three purposes: First, the disclosure helps to provide voters with information relevant

to their ballots. Voters may judge that the sources of a candidate's financial support tell much about his outlook and qualifications. "Birds of a feather flock together." The knowledge that a number of underworld figures have each contributed just under the $1,000 ceiling to a candidate who is preaching vigorous law enforcement would help voters appraise his platform. Similarly, a candidate's attitude toward the issuance of stricter regulations designed to reduce air pollution by the Environmental Protection Agency might well be appraised in the light of the contributions he was disclosed to have received from the executives of large manufacturers of cement and oil refineries. The formal reports may not themselves be very meaningful to voters, but their availability to opposing candidates and a vigilant press will keep the voters advised about such relevant circumstances.

Second, disclosure of receipts and expenditures is a safeguard against the use of money for corrupt or dishonorable purposes. In some instances the very payments encouraged by absence of a duty of disclosure might be unlawful, as in the case of bribery of voters or election officials. Cf. *Burroughs* v. *United States,* 290 U.S. 534, 545 (1934). Other expenditures, though not illegal, may be of a character that many voters would regard as immoral or otherwise offensive. "Dirty tricks" designed to embarrass a candidate by putting him in a false light or to disrupt his campaign schedule or public rallies are one example; political espionage is another. The record-keeping and reporting provisions discourage such activities and increase the likelihood that, if they occur, they will be exposed and voters may take account of them. It is hardly necessary to add that the solicitation and funneling of political contributions to Hunt, Liddy and other original Watergate defendants would have been more difficult to accomplish clandestinely under the challenged legislation.

Third, the record-keeping and reporting requirements will deter violation and facilitate enforcement of the ceilings on contributions and expenditures. The man who might otherwise contribute an illegal sum (*i.e.* in excess of $1,000) will think twice when he knows that the recipient will be under a duty of reporting and disclosure. By requiring a few aggregate figures in addition to those specified in the statute, so as to show whether initial assets plus receipts balance with the expenditures plus assets remaining, the Federal Election Commission can also make the reports an effective means of deterring improper expenditures.

The purposes served by the disclosure provisions are plainly of such high public value as to make it unnecessary to consider whether the appropriate yardstick is best expressed by "compelling purposes" or by some less demanding phrase. The constitutionality of requiring disclosure of campaign contributions was sustained in *Burroughs* v. *United States*, 290 U.S. 534 (1934). Although *Burroughs* was decided prior to the recent development of legal doctrine interpreting the First Amendment, the continued vitality of its holding was reaffirmed in *United States* v. *Harriss*, 347 U.S. 612, 625-26 (1954).

Appellants apparently concede the constitutionality of disclosure laws as applied to the two major political parties but argue that the First Amendment prohibits their application to minor parties, new parties and independent candidates. The need for disclosure, as the court below observed (J.S. App. 1547), is no less in the latter instances. Disclosure is a means of providing the public with relevant information, of deterring corrupt election practices, and of implementing enforcement of the ceilings on financial contributions and expenditures, in the case of independent candidates and the candidates of minor parties just as much as in other cases. There is obvious fair-

ness in applying the same disclosure laws to all candidates and all parties. The need is the same in all cases (unless minor, new party and independent candidates are to be brushed aside under the maxim, *De minimis non curat lex*). Appellants' argument thus comes down to an assertion that requiring disclosure by new or minor parties, or by independent candidates, will do more to discourage their prospective contributors than potential Democratic or Republican contributors, because their contributors face greater risks of reprisal.

The argument is sheer guesswork. The few, scattered incidents incompletely described in the record do not approach the level of public harassment, much less the kind of "uncontroverted showing" of "economic reprisal, loss of employment, threat of phyiscal coercion, and other manifestations of public hostility" made in *NAACP* v. *Alabama*, 357 U.S. 449, 462 (1958). There is not the slightest evidence in the record that contributors to any political party in the United States, major or minor, new or old, or to any independent candidate, have been subjected to substantial public reprisals. Insofar as the hypothetical danger is supposed to be of political reprisal, there is no reason to suppose that one who is enjoying political patronage under a Republican administration will suffer more if he is discovered to be contributing money to the Conservative Party than if his gifts go to the Democratic Party. Anyone who engages in political activity risks some criticism or loss of friends. Although the record fails to show that any appellant suffered from such reactions, it seems proper to add that wider and more damaging public reprisal would be needed to invoke the First Amendment.

The Court has consistently held that such speculative hazards as appellants articulate are "too remote to require striking down a statute which on its face is otherwise

plainly within the area of congressional power and is designed to safeguard a vital national interest." *United States* v. *Harriss,* 347 U.S. 612, 626 (1954). See also *Lewis Pub. Co.* v. *Morgan,* 229 U.S. 288 (1913); *Viereck* v. *United States,* 318 U.S. 236 (1943); *United States* v. *Finance Committee,* 507 F.2d 1194 (D.C. Cir. 1974); *Stoner* v. *Fortson,* 379 F. Supp. 704 (N.D. Ga. 1974). The decisions holding disclosure requirements invalid under the First or Fourteenth Amendments are readily distinguishable. In *NAACP* v. *Alabama,* 357 U.S. 449 (1958), the State was unable to assign any reason for the enforced disclosure. In *Bates* v. *Little Rock,* 361 U.S. 516 (1960)) and *Shelton* v. *Tucker,* 364 U.S. 479 (1960), the disclosure required went far beyond anything necessary to achieve the purposes assigned to the statute, even if they could have been regarded as compelling. The disclosure requirements should, therefore, be upheld not only against facial attack but insofar as their prospective application can be projected upon this record.

We press the argument no further than the record requires because it is possible, here as under a few other sections, to imagine situations in which enforcement of the disclosure requirements might raise a more difficult constitutional question. Occasionally, tiny political parties are founded and endure to support candidates without hope of election, as a means of voicing grievances and seeking support for causes so contrary to the dominant social or political current as to be repellent to the general public. The First Amendment protects such groups. Far out as they may seem in the beginning, one or more may become an important agent of reform. It is possible to imagine cases, therefore, in which the unpopularity of a political party *could* be so great that disclosure of the names of its financial supporters would subject them to risk of widespread public reprisal.

This case does not raise the question whether the reporting requirements would be constitutional as applied to those hypothetical circumstances. None of the appellants makes such a case. There is no reason to suppose that such a situation exists anywhere in the United States today in respect to any election affected by the FECA, as amended. Nor is there evidence of any likelihood that such a situation will come into being. Even if it be assumed that the disclosure requirements would be unconstitutional if applied in such circumstances, the resulting overbreadth would not render the provision unconstitutional on its face or as its operation is projected upon this record, for the reasons stated at pp. 62-63 above.

In this instance, moreover, the statute need have no chilling effect upon the exercise of First Amendment freedoms in any debatable area. The party faced with such unpopularity would not have to risk prosecution, nor would its potential contributors be required to disclose themselves, in order to raise the constitutional question. The party would have ample standing to raise the issue prospectively if it could show that the danger of reprisals was real. *NAACP* v. *Alabama,* 357 U.S. 449 (1958).

III

Public Financing of Campaigns For President of the United States Under the Federal Election Campaign Act Is a Constitutionally Permissible Remedy For Grave Public Evils.

The spiraling cost of federal election campaigns coupled with the candidates' need to look to private sources of financial support created grave public evils described earlier in this brief: the pressure upon candidates to obtain "big money" from contributors expecting repay-

ment in the form of governmental favors; the loss of public confidence in the integrity of the Executive and Legislative Branches as citizens observed large contributors obtain official rulings and other action beneficial to their financial interests; the narrowing of opportunities to be a candidate for office because wealth or access to wealthy supporters seemed necessary to mount effective political campaigns; and the increasing influence of big contributors upon the candidates.

Congress prescribed a tripartite remedy for these and related evils. One part imposes ceilings upon the size of contributions and expenditures in order to reduce the actual and apparent influence of money (see pp. 22-73 above). The second part requires detailed disclosure of contributions and expenditures within the statutory restrictions in order to discourage improprieties and provide voters with information relevant to their ballots. The third aspect is the substitution of public financing for most of the private financing in Presidential election campaigns, and the public supplementation of private financing of campaigns for nomination. Insofar as relevant to the constitutional issues, the plan operates in the following manner:

Section 9006 of the Internal Revenue Code establishes a Presidential Election Campaign Fund to which is appropriated in each fiscal year a sum equal to the number of individuals who indicate on their annual income tax returns, in accordance with Section 6096, a desire to have $1.00 of their tax liability used for that purpose. In 1976, the fund will apparently be adequate for all the payments described below.

Election Campaigns. Upon certification of the Federal Election Commission, the candidates of a major party for the offices of President and Vice President are entitled to draw from the Fund up to $20,000,000, the aggregate expenditure limit set by 18 U.S.C. §608(c).[51] In order to qualify the candidates must agree to incur no campaign expenditures in excess of the amounts that they receive from the Fund, to furnish information and submit to audits with respect to their expenditures, and to accept no money or loans from private contributors. 26 U.S.C. §9003. A major party is defined as one whose candidate received at least 25 percent of the vote in the last Presidential election. 26 U.S.C. §9002(6). Today only the Republican and Democratic Parties come within the definition.

Parties whose candidates for President and Vice President received between 5 percent and 25 percent of the vote in the preceding Presidential election are defined as minor parties. 26 U.S.C. §9002(7). Each minor party candidate may draw from the Fund a sum in the same proportion to $20,000,000 as the ratio between the vote of his party in the preceding election bears and the average of the votes for the major party candidates. 26 U.S.C. §9004(a)(2)(A). In addition, the candidates of minor parties are permitted to continue to raise and expend money from private sources without sacrificing public financial assistance. In further addition, after the election each minor party which receives a larger proportion of the vote than it received in the previous election may draw the additional sum due from applying the formula to its actual vote instead of the votes in the previous election. Minor party candidates, in order to be eligible for such payments, must agree to the same record-keeping and audits as major party candidates but the only restriction upon their receipt of contributions and

[51] The sum of $20,000,000 is to be adjusted for changes in the Consumer Price Index, 18 U.S.C. §608(d). The acceptance of public financing up to the ceiling does not exclude the national committee of a political party from raising funds by private contribution and making expenditures in connection with a Presidential election campaign in an amount equal to 2 cents per person of voting age, *i.e.*, approximately $2,800,000.

expenditures is that the aggregate expenditures, including any money drawn from the Fund, shall not exceed $20,000,000. 26 U.S.C. §§9003(a) and (c).

A new party or independent candidate is entitled to draw from the Fund according to the same formula after the election but only if he or she receives at least 5 percent of the votes cast. 26 U.S.C. §9004(a)(3).

Conventions. The provisions made in Section 9008 for public financing of nominating conventions follow lines parallel to those laid down for election campaigns. Section 9008(d) limits convention expenditures, in the absence of "extraordinary and unforeseen circumstances," to $2,000,000. Major parties may draw this sum; they may not increase their convention expenditures by drawing upon contributions or other resources. 26 U.S.C. §§9008(b)(1) and (d)(1). Minor parties may draw upon the Fund for convention expenses according to the formula used in computing their entitlements for the expenses of the election campaign. Minor parties are also free to raise additional funds for their conventions from private sources, subject to the universally applicable ceilings on the size of each contribution, and to make expenditures up to the same $2,000,000 limit applicable to all conventions. 26 U.S.C. §§9008(b)(2) and (d)(2).

Nominating Campaigns. Any candidate seeking nomination by a political party for election to the Presidency may qualify to receive contributions from the Presidential Primary Matching Payment Account.[52] 26 U.S.C. §9033(b)(2). To qualify the candidate must show that he has received private contributions in excess of $5,000 (counting only the first $250 of any individual's total contribution) in each of at least 20 States, 26 U.S.C. §§9033(b)(3) and

[52] This is a subaccount of the Presidential Election Campaign Fund.

(4); certify that he and his authorized campaign commitee will not exceed the expenditure limits applicable under Section 608(c)(1)(A)[53]; and agree to keep and furnish records and information requested by the Commission and to submit to an audit, 26 U.S.C. §9033(a). Each eligible candidate is entitled to public financing equal to the total amount of private contributions which he has received (again counting only the first $250 of any individual's total contribution).[54] §9034(a). Candidates are eligible for matching funds regardless of their party's nominating procedure, *i.e.*, primary elections, conventions or caucuses.

We submit that this plan for public financing of the cost of political campaigns is constitutional in every respect. We show below, first, that Article I, Sections 4 and 8 of the Constitution empower Congress to place a ceiling upon the expenditures that may be made by a candidate for election to federal office, and also to provide the money to pay for all or part of such costs. Second, we demonstrate that, contrary to appellants' argument (Br. pp. 145-152), the First Amendment does not bar any and all forms of public financing for election campaigns. Third, we turn to the particular program enacted by Congress and show that the formulas determining eligibility for public financial assistance under the FECA, as amended, satisfy the requirements of the First and Fifth Amendments.

[53] See pp. 80-81 above.

[54] These contributions must have been received on or after January 1 of the year immediately preceding the Presidential election with respect to which the candidate is seeking nomination. For purposes of this section and Section 9033, "contribution" includes only gifts of money made by a written instrument which identifies the person making the contribution. 26 U.S.C. §9034(a).

A. *Article I, Sections 4 and 8, Grant Congress Power To Provide Public Financing For the Cost of Federal Election Campaigns.*

Article I, Section 8 of the Constitution provides:

> The Congress shall have power to lay and collect taxes . . . to pay the debts and provide for the . . . general welfare of the United States . . . .

The words empower Congress to appropriate money for any *public* purpose which Congress believes will serve the general welfare. The ancient dispute over whether the spending power extends so far, or is limited by the regulatory powers of Congress, was resolved, first by history and later by this Court, in favor of the broader interpretation. *United States* v. *Butler,* 297 U.S. 1, 65-66 (1936); *Steward Machine Co.* v. *Davis,* 301 U.S. 548, 586-587 (1937); *Helvering* v. *Davis,* 301 U.S. 619, 640-641 (1937). As Justice Cardozo observed in the opinion last cited, "The line must still be drawn between one welfare and another, between particular and general." Providing adequate public financing by which candidates for election as President of the United States may present themselves and their views to the electorate serves a general public purpose, especially when designed to replace the dependence upon private contributions which threatened the integrity of the government and the confidence of the people.[55] Appellants' argument (Br. p. 145) that the appropriations do not serve

[55] *See* Bulloch v. Carter, 405 U.S. 134, 148-49 (1972) where the Court observed: "Viewing the myriad governmental functions supported from general revenues, it is difficult to single out any of a higher order than the conduct of elections at all levels to bring forth those persons desired by their fellow citizens to govern."

the general welfare because the plan is bad for the country raises only a legislative question.[56]

Although the restrictions upon expenditures do not depend upon the public financing, the plan of public financing is keyed to the restrictions upon expenditures, especially the $20,000,000 ceiling upon the aggregate expenditures of any candidate (18 U.S.C. §608(c)). The link casts no doubt upon the power of Congress to enact the combination because the restrictions are within the legislative powers of Congress. See pp. 22-24 above.

Nor does the unusual mechanism chosen to measure the amounts of the annual appropriation to the Fund cast doubt upon the validity of the plan. Each person liable for income tax is offered the annual opportunity to designate $1.00 for the Presidential Election Campaign Fund. 26 U.S.C. §6096. By Section 9006 of 26 U.S.C. Congress appropriates to the Fund for each fiscal year a sum equal to the total designations. The appropriation is like any other, save that the amount is determined by this measure of the extent of public support for the expenditure. The appropriation comes from the general funds of the United States. The money spent for this public purpose will not be available for any other. The burden of raising additional revenues will be distributed among all taxpayers. Just as these elements require the Court to treat the plan as one involving the expenditure of public funds rather than as a mechanism for distributing taxpayers' voluntary contributions, so in our view should these elements preclude a taxpayer from arguing that any part of the very dollar he designates will go to a party or candidate to whom

[56] The contrary *Opinion of the Justices,* 347 Mass. 797, 197 N.E. 2d 691 (1964) rests upon the peculiar ground that an appropriation must be spent by public officials. It is also worth noting that 80 percent of the money the Massachusetts legislature was proposing to appropriate would have gone to one political party. Recent Case, 78 Harv. L. Rev. 1260, 1261 (1965).

he is opposed. Even if this were incorrect, the taxpayer would have no constitutional complaint. As the court below observed (J.S. App. 1562), the taxpayer may freely choose not to make the designation, without incurring detriment.

B. *Public Financial Support for the Cost of Election Campaign Is Consistent with the First Amendment.*

Political campaigns are essential parts of the electoral process. Elections would be lotteries unless candidates were able to make themselves known, to lay proposed programs and policies before the electorate, and to debate personalities and issues. In the crowded modern world, full public attention requires the use of vehicles of mass communication. Such use costs money. One would suppose, but for the vehemence of appellants' argument, that any appropriation of funds with which to carry on the public discussion so vital to the conduct of representative self-government was plainly consistent with both the words and spirit of the First Amendment, provided that there was no interference with what was said or not said, with who might speak, or with the form of expression.

The public financing provided by FECA cannot be faulted upon the latter ground. There is not the slightest tendency to influence who speaks, what any speaker says, or how or when he says it.

Appellants' suggestion (Br. 145-46) that "such programs have almost always been accompanied by various measures of control and surveillance," quoting *Lemon* v. *Kurtzman*, 403 U.S. 602, 621 (1971), tears out of its context an accurate commentary upon the history of subsidies to religious institutions, and applies the words to a different area in which there has been no such experience. As applied to this case, the suggestion is answered by the plain words of the Act. The payments are nowise tied to any measure

of control or surveillance, except to confine reimbursement to the costs of an election campaign for which private funds could be lawfully expended. Justice Holmes provided the short answer to the claim that public financing will lead to censorship and government control of political parties so inexorably as to require the Court now to invalidate financing free from such interference: "Not while this Court sits." *Panhandle Oil Co.* v. *Knox*, 277 U.S. 218, 223 (1928) ("The power to tax is not the power to destroy while this Court sits."). See also *Cole* v. *Richardson*, 405 U.S. 676, 686 (1972).

The distinctions between this case and the cases involving aid to religion begin with a clear difference in the governing words. The interdiction respecting religion reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." Under the Establishment Clause, "[n]either a state nor the Federal government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another." *Everson* v. *Board of Education*, 330 U.S. 1, 15 (1947). With respect to speech, the First Amendment provides only that Congress shall make no law "abridging the freedom of speech, or of the press." There is no Establishment Clause applicable to speech or political activity. The interdiction against abridging freedom of speech cannot be read to imply that the government shall not enlarge freedom of all speech by promoting its exercise.

Second, the Establishment Clause and the decisions giving effect to it derive from a distinct historical experience. From persecutions and prosecutions for heresy, from trials for witchcraft and experience under State religions, the Framers of the First Amendment learned that the religious beliefs of men and women, the ways in which they worship and whether they worship—indeed, all aspects of religious activity or inactivity—must be isolated from every form

of government intervention as matters of wholly private, personal concern. See *Everson* v. *Board of Education*, 330 U.S. 1, 8-15 (1947). "Render unto Caesar the things that are Caesar's and unto God the things that are God's."

Political election campaigns are inseparable parts of the processes of representative self-government. Their vitality and integrity are matters of profound public concern. Where the Establishment Clause and history conjoin to teach that the government shall not promote religion because the domain of religion should be set aside as a garden in the wilderness, neither admonition nor experience suggests that the public may not provide the means of conducting that fullness of political debate necessary to the preservation of representative government.

History is filled with examples of federal legislation giving financial encouragement to the exercise of freedom of expression. For many years "newspapers and other periodical publications" as well as books and other educational materials have been carried at subsidized postal rates. 39 C.F.R. §132.2(a)(1), formerly 39 U.S.C. §4354(a). Today the government provides financial assistance to the Corporation for Public Broadcasting. 47 U.S.C. §§390-96. Professor Zechariah Chafee, Jr., an ardent defender of all First Amendment freedoms, observed:

> Just as unrestricted freedom of locomotion would be useless without streets and roads, so when communication passes beyond a conversation in a small group, somebody must provide means for reaching hearers, readers, or other consumers. Often the state or some other governmental agency is best fitted to supply the essential facilities. Chafee, *Government and Mass Communications* 479 (1947, repr. ed. 1965).

Appellants slide over the critical distinction between public aid to the conduct of election campaigns and public aid to a particular party or belief. We accept, for the purposes of this case,[57] the observation in the second flag-salute case that the purpose of the First Amendment is to reserve the "sphere of intellect and spirit . . . from all official control." *Board of Education* v. *Barnette*, 319 U.S. 624, 642 (1943). Similarly, we accept the views expressed by Justices Black and Douglas in *Machinists* v. *Street*, 367 U.S. 740, 778, 788-91 (1961) and *Lathrop* v. *Donohue*, 367 U.S. 820, 871, 882-83 (1961) to the effect that the individual cannot be compelled to finance the propagation of ideas or political causes with which he disagrees. Neither proposition is relevant to the instant case. Unless the allocation is biased, the FECA financing, viewed as a whole, goes not to any particular candidate, or party, or political opinion, but to promote the process of public deliberation prior to balloting. To treat public financing as if public funds went only to one candidate or to a succession of isolated candidates without looking to the combined, overall function of the spending is to misconceive both its purpose and effect.

C. *The Formulas For Determining Eligibility For Public Financial Assistance Satisfy the First and Fifth Amendments.*

In examining the present challenge to the particular plan for public financing of campaigns for nomination and election of the President of the United States, the Court should be guided by two propositions: first, Congress may provide such aid if the distribution formula draws no ideological lines and is sufficiently fair and general to constitute sup-

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[57] At least one scholar has criticized the observation. See Howe, *The Garden in the Wilderness* (1965) 110-115.

port for the process of political debate rather than particular parties, candidates or ideologies; second, any rule of distribution which accords every party or other political group substantially equal treatment in relation to its political needs and potentials violates neither the First nor Fifth Amendment.

1. *Presidential Elections*

In framing the FECA provisions relating to the financing of the Presidential election campaigns, Congress had four objectives:

(1) to provide for full public disclosure of, and debate upon, candidates and issues; but, once that was assured, to stop the spiraling expenditures which generated personal and party obligations corrosive to the integrity of government;
(2) to relieve candidates and their supporters of the need to raise funds from private contributors by substituting public financing insofar as practicable;
(3) to avoid wasting public funds and diverting attention away from the serious candidates to others without any significant chance of winning the election; and
(4) to treat all candidates equally in the sense that the allocation of public financing, when coupled with other parts of the statutory program, should neither aid nor handicap one party or candidate in relation to any other.

It is probably impossible to achieve 100 percent of all four goals without creating other more serious problems. We submit that Congress achieved enough of each objective, and struck a fair enough balance between conflicting objectives, to satisfy the most exacting constitutional test.

The first step in the accommodation was to subject every party to the $20,000,000 ceiling upon expenditures. 18 U.S.C. §608(c)(1)(B). Each major party is then offered the opportunity to give up its opportunity to raise campaign funds by private contribution in return for $20,000,000 from the Presidential Election Campaign Fund.[58] In the absence of any statutory restriction, both major parties would have power to raise and spend an additional $10,000,000, $20,000,000 or even $50,000,000.[59] The major parties are thus subjected to the same constraints and receive the same benefits. Although a theoretical argument can be constructed to the effect that this allocation alters what would be the relative positions of the major parties in respect to campaign financing in the absence of the FECA, history shows that for 116 years the man elected President has been nominated by one of the major parties.[60] There have been many close elections and shifts in ascendancy. Under these circumstances, it is surely fair and equal to provide the same public support to both parties, thus assuring the body politic that greater spending power will not determine the outcome of an election. The considerations which led Congress to look to a minor party's earlier vote in order to measure its fair subsidy are not applicable under these circumstances.

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[58] See p. 81, n. 51, above.

[59] In 1972, the Republican Presidential candidate spent a total of $55,000,000 in seeking his party's nomination and running for reelection. The Democratic candidate spent $38,200,000 in his primary and general election campaigns. (Finding II, ¶ 51, II J.A. 451.) In 1968, the Republican candidate spent $29,000,000 in the general election alone. The Democratic candidate spent $13,600,000. (1969 Cong. Q. Almanac 1200.)

[60] The figures used in discussing the popular vote in past presidential elections are taken or computed from tables in Schlesinger (ed.), *The Coming to Power*, pp. 498-533 (1971).

The difficulty in determining what financial support should be offered to minor parties and new parties is that they have never approached equality with the major parties in their ability either to raise and expend campaign funds or to win Presidential elections. Major parties have manifold greater significance in these respects because of their relative continuity, their strength in all parts of the country, their roles in State elections, and their vastly larger membership and more numerous supporters. No Presidential candidate nominated by a major party or new party has ever been elected.[61] Minor party and new party candidates have never come close since 1856, unless one counts the elections of 1860 and 1912 in which there were splits in a major party.[62]

Current conditions and history thus conjoined to teach the inappropriateness of granting identical financial support to all parties. "The fact is that there are obvious differences in kind between the needs and potentials of a political party with historically established broad support, on the one hand, and a new or small political organization, on the other . . . Sometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike." *Jenness* v. *Fortson,* 403 U.S. 431, 441-42 (1971). Identical treatment, as the court below observed, "would not only make it easy to raid the United States Treasury, it would also artificially foster the proliferation of splinter parties" (J.S. App. 1563), by radically altering the relative positions of the candidates in the absence of public financing. This Court has recognized on several occasions the important public interest in protecting the political processes against this kind of distraction. *Storer*

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[61] Political organization was so fluid in 1824 as to preclude any generalization about "party" strength.

[62] See pp. 100-01 below.

v. *Brown,* 415 U.S. 724, 736 (1974); *Bullock* v. *Carter,* 405 U.S. 134, 145 (1972).

At the same time, the congressional sponsors of the FECA were fully appreciative of the importance of preserving the potential fluidity of American political life. New and minor parties contribute ideas and influence the course of events to a greater extent than mere membership rolls might indicate. Change and growth require that every new party have a fair chance to move to the foreground and establish itself as a major influence, as did the Republican Party in 1856 and 1860. It would also be inconsistent with the policy of the First Amendment for government to influence more than marginally the relative strength of political candidates, ideologies, or groups, and then only if compelled by some paramount objective.

These desiderata pull in different directions. Various accommodations are conceivable. A number were considered by Congress.[63] The solution chosen has three parts. First, Congress left minor parties and new parties free to raise campaign funds from private sources and spend them up to the full limit of their power, subject only to the fair possibility that one might reach the ceiling of $20,000,000. Next, Congress *increased the spending power of every minor party* by providing a financial supplement—not a substitute as in the case of major parties—from the Fund. As a minimum, the minor party is entitled to a sum bearing the same proportion to the $20,000,000 available to each major party that its vote in the last Presidential election bears to the average of the votes of the major parties. Further, in an effort to provide for a situation in which some minor party's true strength in a new election is substantially greater than in the past, the statute stipulates that a minor party which secures a larger percentage

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[63] See e.g., S.1760, 94th Cong., 1st Sess. (1975) (voucher plan); S.1954, 93d Cong., 1st Sess. (1973) (petitions).

of the average vote of the major parties in the new election than it received in the old shall be entitled to additional payments from the Fund up to the sum due under the new proportion. Although the dollars paid after an election in proportion to votes then won cannot be spent in the effort to win them, any major increase in a minor party's strength would normally be discernible as the election campaign progressed and the party should find it easier to increase its spending by borrowing or obtaining credit against the prospective payments.

New parties and independent candidates receive no advance payments from the Fund but do receive payments after the election whenever their respective candidates poll more than 5 percent of the votes cast.

These provisions create no inequalities. So far as the future can be predicted, the candidates of minor and new parties will have a financial power under the FECA which, when compared with the power of the major parties, is proportionately greater than it would be in the absence of legislation. Under FECA a major party receives $20,000,000 in substitution for the ability to raise and spend much more than that sum. The minor aprty receives a payment proportionate to its probable significance measured by the electoral vote in the last election *plus* the sums which it can raise and spend from private sources *plus* the guaranty of a further sum after the election, if deserved, in order to make its subsidy proportionate to its actual electoral significance. Although statistical measurement is impossible because of the short lives and trifling significance of most minor parties in the political history of the United States, it seems quite plain that, when the package of financial opportunities allowed minor parties is compared with the $20,000,000 to which the major parties are limited, any minor party will be proportionately better off financially than minor parties were before.

Nothing in the First or Fifth Amendment establishes a rule requiring Congress to choose between retaining the system of private financing of political campaigns and giving every party or candidate the same sum of money. "Sometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike. . . ." *Jenness* v. *Fortson*, 403 U.S. 431, 442 (1971). Congress, like the State of Georgia in *Jenness*, was free to take into account the "obvious differences in kind between the needs and potentials of a political party with historically broad support, on the one hand, and a new or small political organization on the other." *Id.* at 441. There is no invidious discrimination in a plan of regulation and public financing which, so far as can be predicted, leaves the new or small organizations relatively as well or better off than before. Any slight risk that a minor party will lose financial power relative to a major party because of some unforeseen circumstance is amply justified by the interest in avoiding public expenditures serving chiefly to promote frivolous candidacies and splintered parties or unrestrained factionalism. Cf. *Bullock* v. *Carter*, 405 U.S. 134, 145 (1972); *Storer* v. *Brown*, 415 U.S. 724, 736 (1974); *American Party of Texas* v. *White*, 415 U.S. 767 (1974).

More detailed analysis of the separate elements of the FECA plan confirms the foregoing conclusions. The statutory formula for the pre-election allocation of public funds to minor parties was consciously based upon the Court's approval in *Jenness* of a system which based differential treatment upon demonstrated relative strength in prior elections. S. Rep. 93-689, p. 9. The aim, as stated above, was to give financial support in a way which would most nearly reflect the candidate's actual significance as an election factor, thus minimizing governmental influence upon the outcome of the election. The distribution formula takes the minor party's percentage of the vote in the previous

election as the principal determinant. There is probably room for rational argument about whether the vote secured by a party four years earlier is the best measure of a candidate's current significance. The difficulty, as the court of appeals recognized, is that other measures are either subjective or more chancy. To allow a government agency to judge any political party's strength or importance, except when anchored to unmistakable statistical benchmarks, carries obvious dangers. Polls are too chancy, especially polls taken early in an election year. To distribute vouchers to be assigned by individual voters might possibly prove workable but, again, the risks are high: How many voters would actually make assignments? How many would make assignments in time to finance campaigning? What are the dangers of a race to be the first fund raiser for a candidate to make a personal approach? How would the expenses of that solicitation be met? How responsibly would voters handle such "phoney money?" What are the dangers of a "black market?" In the face of such uncertainties, it is impossible to say with any assurance that Congress could have found a more reliable yardstick for measuring a minor party's initial entitlement to public financial support.

The risk of error in thus estimating the significance of minor and new parties' candidates is reduced by Section 9004(a)(3), which provides still further post-election payments to those minor party candidates who obtain at least 5 percent of the popular vote and demonstrate greater electoral significance than they had four years before. In such a case, the total payments will reflect the actual proportion of the vote won. The payment cannot be spent in advance, just as the candidate's electoral strength cannot be known in advance, but any substantial increase in popular support should be at least partially evident early enough in the campaign to increase the financial strength

of the new or minor party by facilitating borrowing and obtaining credit.

The value of the potential pre-election and post-election payments to minor party candidates and of the potential post-election payments to new party candidates is not to be judged as if they were such candidates' only financing. Where major party candidates must forego private financing in exchange for the smaller $20,000,000 payment, new party and minor party candidates may use any public financing to which they are entitled in addition to private financing. Although they are theoretically subject to the $20,000,000 ceiling, there is not the slightest indication that any will ever achieve it. The ceiling operates, on the other hand, to prevent the major parties from enjoying their full power to raise and spend money from private sources. This difference greatly strengthens the relative financial position of new and minor party candidates under the FECA as compared to what it would be in the absence of legislation.

It is difficult to find historical examples by which to demonstrate these generalizations. New parties and minor parties have much too rarely been significant factors in Presidential elections. However, a few facts are worth noting.

(1) The only newly-formed party to move to the front in a field of established parties and elect its nominee as President was the Republican Party, which elected Abraham Lincoln in 1860. For that election it would have been a "major party" under Section 9004(a)(1) because of its large vote in the 1856 election. In 1856 the Republican candidate would have qualified for post-election financing equal to the sums already received by the Democrats and Whigs, but not for pre-election payments unless the Republicans could have claimed as successors to the Free Soilers, who would have qualified as a minor party in 1848.

(2) The Populists won approximately 9 percent of the popular vote in 1892. The Populist candidate would have qualified for just under 10 percent of the subsidy available to the two major parties in 1896, in addition to his private financing.

(3) In 1924 the Progressive Socialists would have received 17 percent in arrears and, if the party had survived, their 1928 candidate would have been entitled to that payment in advance of the election, in addition to his private contributions.

(4) No new or minor party ever received 5 percent of the popular vote in any other election, except in 1968.

(5) Beginning with the 1968 election it is possible to make a rough comparison of actual financial support with a projected operation of the FECA plan. In that Presidential election campaign the Republican candidate actually spent $29,000,000; the Democratic candidate spent $13,600,000; and the American Independent Party candidate spent $7,200,000 (1969 Cong. Q. Almanac 1200). Application of the FECA expenditure ceiling, by itself, would have improved the relative financial position of the American Independent Party candidate *vis a vis* the Republican. The actual expenditure ratio was approximately 1:4, the ceiling would have reduced the disadvantage to 1:3. The ceiling alone would not have altered the relative spending power of the Democratic and American Independent candidates. The American Independent candidate would also have been entitled to an additional $6,200,000 after the election, assuming that he had expended such a sum, thus bringing his total funding to $13,400,000—a tremendous gain relative to both the major parties. In actuality, the total expended could hardly have been so high because it is unlikely that the American Independent candidate could

have borrowed or received credit against the full sum to which he proved entitled after the election. Still, even if the figure is severely discounted, it seems plain that the FECA would have greatly improved the American Independent candidate's relative financial position.

Although the American Independent Party did not nominate a widely-known candidate in 1972, one can get further insight into the probable operation of the FECA plan by projecting its 1968 record into 1972. In 1972 the Republican Party spent $55,000,000. Since there was no real contest for the nomination it is fair to assume that at least $40,000,000 was spent in the general election exclusive of the cost of fund-raising. If the American Independent Party had again raised the $7,200,000 of 1968, the Republican Party would have outspent it by more than 5 to 1. Under the FECA the ceiling imposed by Section 608(c) would alone have cut the advantage to 3 to 1. Under the FECA each of the two major parties would have received $20,000,000 in public financing. The American Independent Party candidate would have been eligible, by virtue of its 1968 record, to $6,200,000. In addition, the American Independent candidate was entitled to raise and spend private contributions. The ceilings upon gifts from a single source might have reduced the aggregate below the $7,200,000 raised in 1968, but even if the figure were as low as $4,000,000, the American Independent Party candidate would have had half the spending power of a major party.

We do not offer these figures as anything more than an effort to check the FECA plan against such examples as can be derived from history. Such hypothetical compari-

sons involve assumptions and uncertainties. Nevertheless, even when allowance is made for the speculative elements, the examples confirm the conclusion also to be drawn from abstract analysis—that the total effect of the FECA upon Presidential campaigns is to improve the relative financial position of new parties and especially of minor parties, partly because of the limit upon major party expenditures and partly because a minor party, unlike a major party, receives public financing in addition to what it can raise by private contribution.

History requires us also to add a word of caution. The elections of 1860 and 1912 exhibit situations which do not conveniently fit the FECA structure. In 1860 the Democratic Party split into Northern and Southern wings; the Constitutional Union Party perhaps included other fragments. The Republican Party split in 1912 in every substantial sense, although the Taft wing kept the party apparatus and name, and the Roosevelt wing became the Progressive Party. The FECA makes no express provision for such events. It seems unlikely that Congress desired to have the Federal Elections Commission decide in such circumstances which wing is the true party and give its candidate the entire $20,000,000 while providing no funds to the candidate of the other. Perhaps the problem can be solved, if it should ever arise, by a new rule or regulation of the kind that the Federal Election Commission is authorized to prescribe under Section 9039 of the Internal Revenue Code. The best solution would be to make full financing available to both wings of a divided party, thus avoiding any risk of unduly influencing an election. If this solution is not authorized, then there is a gap in the statute with which Congress will have to deal if the occasion should arise.

In dealing with reforms of great magnitude, neither the Congress nor the Court can foresee every possible eventuality. Conditions may develop in which further amendment of the FECA is essential to fairness. Legislation which embraces a major new departure because of pressing dangers under the old regime almost always requires modification or refinement as new facts develop. The Court is not required to test the Act against every conceivable situation; it rules upon constitutionality in the circumstances shown by the record. Under these circumstances and any which can be projected for the immediate future, the FECA ceilings and provisions for financial support in Presidential election campaigns work no unconstitutional discrimination. Should a new situation arise and Congress or the Federal Election Commission, acting within the scope of its delegated authority, fail to make adjustments, the Court can rule upon the case then presented. The decision here would not govern the constitutionality of the statute under the new conditions. *Chastleton Corp.* v. *Sinclair*, 264 U.S. 543 (1924).[64]

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[64] Appellants pose on pp. 153-54 of their brief a hypothetical example in which Party A received 50 percent of the prior vote, Party B, 25.1 percent and Party C, 24.9 percent. The example is too abstract to be meaningful because we are told absolutely nothing about the organization, previous history and present circumstances of the three parties. The one absolutely certain thing is that all political history shows that Congress had no cause to concern itself with so theoretical a possibility, unless there was a true split in a major party. Neither a minor party nor a new party has come near to 25 percent of the vote for more than a century. Should the improbable occur, Congress and, if necessary the Court can face the new condition.

In appraising not only the 25 percent line but all others, it is appropriate to recall Justice Holmes' observation in Louisville Gas Co. v. Coleman, 277 U.S. 32, 41 (1928) (dissenting opinion).

2. *Conventions*

The court of appeals correctly upheld the constitutionality of the allocation of public funding for party conventions according to the same formula used for distributing pre-election funds for Presidential election campaigns. Appellants' statement that these "federal subsidies will help widen the gap between major parties and all other political groups" (Br. p. 169) has no foundation in fact. Like appellants' other attacks upon public financing, the argument makes an altogether false comparison by ignoring half the statutory plan.

The major parties will each be eligible for $2,000,000 in federal funding. 26 U.S.C. §9008(b)(1). Since each is also prohibited from spending more than $2,000,000 for its convention, the subsidy is in substitution for much larger private spending. Any new party or minor party is free to raise and spend private funds in addition to any public funding to which it may be entitled. Contributions for this purpose will not even be subject to the $1,000 ceiling upon individual gifts. 18 U.S.C. §608(b)(1). A degree of effort which is not reducible to monetary terms may be required to raise the private contributions, but, even after allowance for this factor, it seems quite plain that the net effect is to make the new parties and minor parties relatively better off in their ability to equal the convention spending of major parties than they were before.

When a legal distinction is determined, as no one doubts that it may be, between night and day, childhood and maturity, or any other extremes, a point has to be fixed or a line has to be drawn, or gradually picked out by successive decisions, to mark where the change takes place. Looked at by itself without regard to the necessity behind it the line or point seems arbitrary. It might as well or nearly as well be a little more to one side or the other. But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark.

3. *Campaigns for Nomination*

The FECA greatly enlarges the opportunities for candidates to seek nomination for election to the Presidency despite their lack of wealth or access to wealth by providing matching grants for candidates who have qualified by showing that they have received contributions aggregating at least $5,000 from the residents of each of 20 States, counting only the first $250 of each contribution. 26 U.S.C. §9033(b). Every candidate is subject to an aggregate expenditure ceiling of $10,000,000. 18 U.S.C. §608(c)(1)(A). These provisions help the candidate who can reach the threshold in two ways: (1) they prevent the more powerful money-raiser from greatly outspending the less by spending far above the ceiling; (2) they double the money available to the less effective money-raiser in contributions of $250 or less. The entire thrust of the measure is thus to reduce the financial barriers to effective candidacy—a step in keeping with constitutional trends. Cf. *Harper* v. *Board of Elections*, 383 U.S. 663 (1966); *Bullock* v. *Carter*, 405 U.S. 134 (1972).

The eligibility requirements are designed to confine the federal subsidy to those candidates who have such serious support of their own as to give them a significant chance of winning nomination. Ability to raise funds and to attract popular support is not only an important measure of a candidate's potential but a more reliable guide than any other available (such as the artificial taking of polls). To concentrate the public funds upon the serious candidacies avoids encouraging "frivolous or fraudulent candidacies" and "splintered parties and unrestrained factionalism." *Bullock* v. *Carter*, 405 U.S. 134, 145 (1972); *Storer* v. *Brown*, 415 U.S. 724, 736 (1974). The principle applies with greater force in the context of public spending than in the regulation of the political system because its appli-

cation in the former sphere nowise restricts the ability of the minor group to promote its ideas and interests without government interference.

The requirement that support come from 20 States is not invidiously discriminatory in the context of Presidential elections, for it too is a rational measure of the importance of a candidacy. Presidents, unlike State-wide officials, are not chosen by counting equally all the popular votes. A Presidential candidate, in order to have a serious chance of election, must have support in various geographical sections. This requirement is likely to be at least as important in obtaining nomination as it is in the general election. *Moore* v. *Ogilvie*, 394 U.S. 814 (1969), is distinguishable not only upon this ground but because the evident purpose of requiring signatures on nominating papers from 50 of 102 counties was to bar formation of a new political party without support in rural counties containing less than 7 percent of the voters. The present 20 State requirement is but a modest and reasonable measure of whether the candidate has more than local political recognition and support.

In criticizing the statutory method of gauging the relative support for candidates as discrimination in favor of the wealthy (Br. p. 167) appellants resort to semantic and statistical confusion. The effect of the progressive income tax is irrelevant here. The criterion of eligibility is "wealth" only in a very special sense, because the reference is to campaign funds raised from a very wide circle of supporters. Such words as "the wealthy" and "wealthy persons" are also misleading because they divert attention from the fact that only the first $250 of any contribution counts in determining eligibility and the amounts of matching funds—a limitation that links the matching payments to the number of supporters serious enough to give modest financial assistance to the candidate of their choice.

When the adjectives are stripped away, the fact remains that the candidate for the nomination who has wide popular support among those citizens who can donate $250 apiece will receive aid proportionate to that support, whereas the imaginary candidate who is supposed to have equal present and potential support among citizens who cannot afford the contributions receives nothing. The difference might not be tolerated in an ideal world of perfect political "equality," where equality was measured without regard to ability to raise or contribute funds, and in which there was perfect ability to test such suppositions of wide political support. Given the existing political system, the matching payments do not wipe out, but plainly tend to reduce inequalities of opportunity due to differences in fund-raising capacity, especially the inequalities due to differences in ability to raise large contributions. The allocation of funds according to the statutory formula will almost surely increase the proportionate spending power of the serious candidates with the least fund-raising ability in relation to their initial popular support—if they can cross the threshold—because candidates with large spending power in relation to their initial popular support obtain a good part of their funds from large contributions. The imaginary candidate with popular support but no ability to raise funds is unlikely to find himself worse off than before. If he could win before, despite his lack of funds, he can win without them under the statute. He is better off under the statute relative to the "big spenders" because the ceilings limit their spending. At worst, he loses some marginal chance that he might have won the nomination instead of a candidate whose success is attributable to funds which that candidate would not have had without the public subvention.

A reform measure that moves strongly in the direction of eliminating the consequences of economic disparities is

not unconstitutional merely because some of life's unfairnesses remain uncured. *Katzenbach* v. *Morgan,* 384 U.S. 641, 657 (1966); *Schilb* v. *Kuebel,* 404 U.S. 357, 366, 372-73 (1971) (majority and concurring opinions); *San Antonio School District* v. *Rodriguez,* 411 U.S. 1, 54-5 (1973). The case in which the FECA plan might increase inequality of opportunity because of differences in fund-raising ability is wholly hypothetical. Were the risk real, it would be more than justified by the public interest in the long stride the plan for matching payments takes toward generally greater equality of opportunity in seeking nomination, and in promoting public discussion of serious candidacies.

IV

The Federal Election Commission Was Established in Accordance With the Constitution and May Constitutionally Perform the Functions Thus Far Undertaken.

The establishment of a permanent, independent Commission, charged with broad oversight of political campaigns for election to federal office, is an institutional development of prime importance not only for implementing the Federal Election Campaign Act, as amended, but for promoting further reforms. The Commission will not only bring continuous study to bear upon developing problems which may require new legislation on the part of Congress and the President. It will have certification and auditing duties in public financing of Presidential elections, and will also serve as the depositary of the FECA reports upon contributions and expenditures designed for the information of the public. By its interpretations and regulations under the FECA it will facilitate compliance, close

interstitial loopholes, and avoid unnecessary unfairness in the practical operation of novel legislation.

The legal challenge to the establishment of the Commission rests upon the assertion that the method of appointing its members is unconstitutional. Section 437c of Title 2 of the United States Code provides that the Commission shall have eight members, two of whom shall be the Secretary of the Senate and the Clerk of the House of Representatives *ex officio,* two of whom shall be appointed by the President of the United States, two by the President *pro tem.* of the Senate upon recommendation of the majority and minority leaders, and two by the Speaker of the House of Representatives upon the recommendation of the majority and minority leaders, but the last six confirmed by a majority vote of each House of Congress. Appellants argue that the members of the Commission are "officers of the United States," and that the foregoing method of appointment therefore violates Article II, Section 2, Clause 2 of the Constitution, which provides that the President—

> shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

We agree with the Attorney General (Br. pp. 110-111) that the issue cannot be solved as a problem of nomenclature. From the beginning the approach to questions concerning the separation of powers generally, and the

appointment and removal of officers in particular, has been flexible and pragmatic. Note, *Power of Appointment to Public Office Under the Federal Constitution,* 42 Harv. L. Rev. 426 (1929). New institutions of government have developed as new times produced new problems, subject only to the fundamental necessity of maintaining the essential balance of the three departments and preventing one from taking over functions falling exclusively in the core of power belonging to another. As Justice Holmes observed in *Springer* v. *Philippine Islands,* 277 U.S. 189, 209-211 (1928) (dissenting opinion), "The great ordinances of the Constitution do not establish and divide fields of black and white. Even the more specific of them are found to terminate in a penumbra shading gradually from one extreme to another . . . . When we come to the fundamental distinctions it is still more obvious that they must be received with a certain latitude or our government could not go on . . . . It does not seem to need argument to show that however we may disguise it by veiling words we do not and cannot carry out the distinction between legislative and executive action with mathematical precision and divide the branches into watertight compartments. . . ."

Accordingly, the answer to the question whether the Federal Elections Commission was established and its members appointed in violation of the Constitution is to be found in study of the functions assigned to the Commission and its relation to other arms of government, the occupants of other offices, and the political system as a whole.

We divide the inquiry into two parts. We show, first, that the Commission exercises a number of important functions not belonging exclusively to the Executive Department but appropriate for an independent arm of government exercising quasi-legislative power. We then demonstrate that the Constitution does not forbid dividing the authority for selecting members of this truly independent Commission among the President and the highest officers of the Senate and House of Representatives in order to build the greatest public confidence in its complete impartiality and freedom from influence in performing its unique duties in scrutinizing the political campaigning of the President and members of Congress, and in disbursing public funds in Presidential elections.

We do not examine a number of duties assigned to the Commission, such as making recommendations for criminal prosecutions and instituting civil enforcement actions. Whether they are so essentially executive in character as to belong exclusively to the Executive Department need not be decided in this case. Since the Commission was established in accordance with the Constitution to exercise a core of power which Congress and the President could lawfully confide in its members by enacting the measure and signing it into law, decision upon the delegation of other powers, not yet exercised, may be postponed. It cannot matter to any of the appellants whether enforcement involves the Commission or is reserved only to the Executive.

A. *The Commission Exercises Important Functions Not Belonging Exclusively to the Executive Department But Appropriate for an Independent Agency With Quasi-Legislative Powers.*

Although there may be room for controversy over whether some of the functions assigned to the Commission are properly prerogatives of the Executive Department, its major duties are of kinds never regarded as belonging exclusively to that Department and often per-

formed by other arms of government free from Executive control and variously described as "legislative" or "independent."

1. *Investigations and Reports.* The Commission is given wide power to conduct investigations, direct studies and make legislative recommendations. 2 U.S.C. § 437d, 26 U.S.C. §§ 9009, 9039. The power extends beyond the financing of political campaigns to "the administration of elections." 2 U.S.C. § 438(b). Since these duties might be delegated to an independent agency, a committee of Congress or even congressional staff, there is no room for constitutional challenge to the assignment to the Commission.

2. *Depositary of Reports of Contributions and Expenditures.* One of the Commission's major duties is to serve as the depositary of all reports required of contributors, political committees, and candidates for federal office disclosing receipts and expenditures. In order to facilitate compliance, the Commission is charged with developing forms for reports and record-keeping. It is also charged with conducting audits and investigations, in order to bring apparent violations to the attention of the Executive Branch and to inform Congress upon the operation of the Act and any need for amendment. Because a primary purpose of the reporting requirements is to inform the public, the Commission is directed not only to make the reports public but to develop mechanics for filing, indexing and copying which will facilitate publication. 2 U.S.C. § 438.

History and reason indicate that although these duties could properly be assigned to executive officials appointed by the President, they are also allocable outside the Executive to an officer or agency created by Congress. Duties essentially similar to the Commission's responsibilities as depositary of reports concerning campaign finance have been vested in officers of the Senate or House

of Representatives for almost three quarters of a century. The Corrupt Practices Act of 1910, 36 Stat. 822, required political committees to keep records of all contributions and expenditures for filing with the Clerk of the House after the election. The legislation was broadened in 1911 and the Secretary of the Senate was given duties paralleling those of the Clerk. 37 Stat. 25. The Corrupt Practices Act of 1925, 43 Stat. 1070, greatly elaborated the reporting and disclosure requirements and imposed expenditure limitations in campaigns for Senator and Representative. The details are unimportant except to point out that once again the Secretary of the Senate and the Clerk of the House were assigned key roles. Primary responsibility for enforcement of the expanded reporting and disclosure provisions of the Federal Election Campaign Act of 1971, 86 Stat. 3, was vested in the Secretary, the Clerk and the Comptroller-General.

The foregoing statutes were enacted at different Congresses and signed by a number of Presidents. The constitutionality of the Corrupt Practices Act of 1925 was litigated and upheld without any suggestion of constitutional impropriety in designating officers in the Legislative Branch as depositaries of the required reports even in the case of a Presidential election. *Burroughs* v. *United States,* 290 U.S. 534 (1934). Consistent practice, in which all branches of the government have acquiesced, shapes the applicable constitutional law in an area where little guidance can be found in the words of the instrument. *Stuart* v. *Laird,* 1 Cranch 299, 309 (1803); *Lithographic Co.* v. *Sarony,* 111 U.S. 53, 57 (1884); *Ex parte Grossman,* 267 U.S. 87, 118-119 (1925).

There is an additional reason for not regarding the receipt and scrutiny of financial information relating to campaigns for election as Senator or Representative as duties belonging exclusively to the Executive Department.

Article I, Section 5 of the Constitution makes each House "the judge of the elections . . . of its own members." The receipt of reports concerning financial practices is closely related to that constitutional duty.

3. *Duties in Public Financing of Presidential Elections.* The Commission is a primary administrator of the public funding of Presidential election and primary campaigns under Chapters 95 and 96 of the Internal Revenue Code, 26 U.S.C. §§ 9001 *et seq.* The Commission certifies to the Secretary of the Treasury the names of those who have complied with the statutory conditions for eligibility and the amounts due; it also conducts audits and sees that overpayments or improperly spent funds are returned to the Treasury.

In order for a Presidential candidate to receive public funds, he must agree in writing to furnish the Commission with evidence of his campaign expenses, to keep and furnish records, to submit to Commission audit, and to make any required repayments where necessary. 26 U.S.C. § 9003(a). Presidential candidates of major parties who seek federal financing must also certify to the Commission that they will not incur campaign expenses in excess of the amount of federal funding received and that they will not accept private financing. The Commission is to designate the time when such certification must be made. 26 U.S.C. § 9003 (b) and (c). If candidates submit the required agreements and certifications, the Commission is, in turn, to certify their eligibility for payment to the Secretary of Treasury, who is charged with the actual disbursement of the authorized funds. 26 U.S.C. §§ 9005, 9006(c). The Commission has no role in determining the amounts paid to eligible candidates, such amounts being fixed by law. 26 U.S.C. § 9004.

The FECA also provides for federal financing of Presidential nominating conventions and of Presidential

primary campaigns. The Commission's certification duties with respect to these payments are similar to its duties relating to Presidential campaigns. 26 U.S.C. §§ 9008(g), 9033, 9036, 9037.

Once payments of federal funds are made pursuant to the above provisions, the Commission has the responsibility of auditing the expenses of Presidential candidates and others who receive these funds, 26 U.S.C. §§ 9007(a), 9009(b), 9038(a), 9039(h), and may, to this end, require the keeping of appropriate records, 26 U.S.C. §§ 9009(b), 9039(b). If the Commission determines that any Presidential candidate received or spent more than was allowable under the applicable statutes, it is required to notify the recipient, who is under a duty to repay the improperly received or expended amounts to the Secretary of the Treasury, 26 U.S.C. §§ 9007(b), 9008(h), 9038(b). If repayment is not made, the Commission may institute suit to recover the amounts due the Secretary, 26 U.S.C. §§ 9010(b), 9008(h), 9040(b), and it may generally seek injunctive relief to compel compliance with the pertinent statutory requirements. 26 U.S.C. §§ 9011, 9040(c). Criminal sanctions are imposed for violations of the federal financing statutes, 26 U.S.C. §§ 9012, 9042, but the Commission has no direct role in respect to the enforcement of these penalties.

The Commission's role in the administration of the public financing available in campaigns for nomination and election as President of the United States is essentially the same as the function of the Comptroller-General in settling and auditing substantially all government accounts, and in certifying amounts for payment. 31 U.S.C. §§ 41, 44, 47, 60, 67, 71, 72, 74. Like the Federal Elections Commission, the Comptroller-General has duties in recovering overpayments. 31 U.S.C. § 227.

The Comptroller-General is, of course, outside the Executive Branch. 31 U.S.C. § 41. His duties in auditing and settling accounts are not functions belonging to the Executive Department. He is often described as "a part of the legislative branch of the Government." E.g., Reorganization Act of 1949, Section 7, 63 Stat. 205. By analogy, we submit, the Commission's auditing and certifying functions are closely related to the legislative power and were assignable, under the Constitution, to an agency created for that purpose, removed from Executive dominance.

4. *Regulations and Advisory Opinions.* The FECA, as amended, gives the Commission broad authority —

> to prescribe rules and regulations necessary to carry out the provisions of this chapter [14 of Title 2 of the United States Code relating to financial reporting and disclosure.]

Any proposed regulation must be laid before Congress and may be issued only if not disapproved within 30 legislative days. 2 U.S.C. § 438. The Commission is given similar authority, subject to the same condition, to issue regulations necessary to carry out the plan for public financing for Presidential candidates. 26 U.S.C. §§ 9009, 9039.

Section 437f of Title 2 of the United States Code empowers and requires the Commission, upon request of a federal office-holder, candidate or political committee, to—

> render an advisory opinion . . . with respect to whether any specific transaction or activity by such individual, candidate, or political committee would constitute a violation of [any law relating to the financial aspects of political campaigns.]

Subsection (b) provides:

> Notwithstanding any other provision of law, any person with respect to whom an advisory opinion is rendered under subsection (a) who acts in good faith in accordance with the provisions and findings of such advisory opinion shall be presumed to be in compliance with [the laws relating to financial aspects of political campaigns].

We submit that the foregoing powers are not integral parts of the President's duty to "take care that the laws be faithfully executed," under Article II, Section 3. On the contrary, both are the kinds of function repeatedly delegated to independent agencies deliberately placed beyond Executive control.

Were one to suppose that the power to issue regulations must be characterized abstractly as belonging to only one of the three great divisions of government, it would fall most naturally in the Legislative Department. Such regulations are described as "legislative" because, when within the agency's authority, they make laws for the future in general terms. Davis, *Administrative Law Text* (3rd ed.) §§ 5.01 *et seq.* They bind the courts as well as other arms of government.

History and practice confirm this theoretical analysis. Although the power to issue legislative regulations has not infrequently been conferred upon an executive officer or department, the result is nearly always described as a "delegation of legislative power;" and the legal question is whether Congress has provided adequate standards to guide the delegate's action. *Panama Refining Co.* v. *Ryan,* 293 U.S. 388 (1935); *Schechter Poultry Corp.* v. *United States,* 295 U.S. 495 (1935). But the practice is by no means uniform. The power to issue legislative regulations is often conferred upon independent agencies such as the Federal Trade Commission and Securities Exchange Commission which are "independent of executive authority" and exercise "quasi-judicial" or "quasi-legislative" power.

In *Humphrey's Executor* v. *United States*, 295 U.S. 602, 628 (1935), the Court said:

> Such a body cannot in any proper sense be characterized as an arm or eye of the executive. Its duties are performed without executive leave and, in the contemplation of the statute, must be free from executive control. In administering the provisions of the statute in respect of "unfair methods of competition" — that is to say in filling in and administering the details embodied by that general standard — the commission acts in part quasi-legislatively and in part quasi-judicially.

Issuing general rules without fixing legal responsibility upon a particular person is plainly a "quasi-legislative" function. It follows that investing such authority in the Federal Election Commission does not violate any principle pertaining to the separation of powers even if the Commission were closely aligned to the Legislative Branch rather than truly "independent."

It would seem to follow that issuing *ad hoc* opinions and other interpretative rulings for the guidance of those subject to a statute may be fixed outside the Executive Branch. Such interpretations do not make new laws because they do not bind the courts. The interpretations cannot bind the Executive, partly because they do not make law and partly because the Executive cannot be subjected to the control of another department or agency in carrying out its functions under Article II. On the other hand, there is nothing inherently "executive" about providing an informed and internally-consistent body of expert opinion concerning the "intent of Congress" for the guidance of those subject to a complex statutory regulation. The function is very similar to the power to issue

legislative regulations giving more concrete meaning to broad statutory terms, and also to the power of interpretation vested in independent agencies under a wide range of regulatory legislation. E.g., *Gray* v. *Powell*, 314 U.S. 402 (1941); *National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U.S. 111 (1944). The Attorney General's bald assertion (Br. p. 117) that interpretative rulemaking falls within the executive prerogative is supported by neither his own reasoning nor the citation of authority.

In the court below, Judge MacKinnon expressed the opinion that Section 437(b) is an unconstitutional invasion of the prerogatives of the Executive Department because it provides that an individual who "acts in good faith in accordance with" an advisory opinion of the Commission "shall be presumed in compliance with" the relevant laws. Judge MacKinnon reached this conclusion because he read Section 437(b) as an attempt to give the Commission power to grant immunity from prosecution. This characterization misconceives both the purpose and effect of Section 437f(b). Section 437f(b) does not authorize the Commission to give immunity from prosecution. The discretion to prosecute or not to prosecute is vested in the Executive alone. The effect of Section 437f(b) is to set forth in more detail the elements of the crimes defined in the sections of the Criminal Code and Internal Revenue Code listed in Section 437f(b), particularly the element of criminal intent. In substance, Section 437f(g) provides that one who does an act prohibited, or fails to perform a duty prescribed, by those sections shall be guilty of a crime if he knew that he was violating the law or failed to obtain an official opinion from the source provided by law. Conversely, the accused commits no crime if he acts in reliance upon that advice, unless he acts in bad faith because he knows the advice to be erroneous. Section 437f(b) delimits the scope of the crimes much as the use

of the word "willfully" would have circumscribed them if Congress had used the word and the courts provided a definition of wilful violation along with lines indicated. E.g. *Hargrove* v. *United States*, 67 F.2d 820 (5th Cir. 1933). It provides a form of statutory defense which the best opinion supports in appropriate cases. LaFave and Scott, *Criminal Law* (1972) 365 *et seq.* The unfortunate draftsmanship should not affect the constitutional question.[65] Legislation is to be given an interpretation which avoids constitutional doubts. *Civil Service Commission* v. *Letter Carriers Union*, 413 U.S. 548, 571 (1973); *Almeida-Sanchez* v. *United States*, 413 U.S. 266, 272 (1973); *Ashwander* v. *Tennessee Valley Authority*, 297 U.S. 288, 348 (1936) (Brandeis, J., concurring).

B. *The Constitution Does Not Bar Dividing Among the President and the Senior Officials of the House and Senate, the Responsibility of Appointing Members of an Independent Commission Having Unique Duties as a "Watch Dog" Over the Political Activities of the President and Members of Congress.*

Two related constitutional conclusions flow from the nature of such of the Commission's duties as we have described.

First, they are not exclusively "executive" in any sense of the word; their assignment to another arm of government does not threaten the independence or functioning of the Executive Branch.

[65] The House Report on Section 437f states that it provides for a rebuttable presumption of compliance which would not foreclose executive prosecution. H. Rep. 93-1239, p. 9 (1974). The language of Section 437f(b) seems ill chosen, but it is not inconsistent with the view that the presumption of compliance can be rebutted only by showing that the defendant did not act in good faith reliance upon the advisory opinion. In this respect, Judge MacKinnon's interpretation seems entirely correct.

Second, the duties of the Commission discussed above are plainly such as might be constitutionally performed by an independent agency whose members are appointed by the President, subject to confirmation by the Senate.

In our view, the Commission is an independent agency removed from the control of both the Executive and Legislative Departments in the performance of its responsibilities (except, possibly, those duties involving the furnishing of information and recommendations for new legislation). We do not understand the Attorney General's casual assumption (Br. p. 110) that the Commission is "an arm of the Congress, a 'legislative agency.' " Neither Congress nor the President has any right to direct the Commission's performance of its statutory duties. Neither could properly attempt to exert influence. Neither, we infer, has a power of removal. Cf. *Wiener* v. *United States*, 357 U.S. 349 (1958). The Secretary of the Senate and the Clerk of the House have no votes in the Commission. The Attorney General misreads the statute when he states (Br. p. 110, n. 68) that "The Commission must submit proposed legislation to Congress before circulating it to any other agency or executive official." Section 437d explicitly states that the Commission shall transmit a copy "concurrently." Similarly, budget requests are to be transmitted "concurrently," 2 U.S.C. §437(d)(1), and the Commission's annual report is to be made "to the President of the United States and to each House of the Congress." 2 U.S.C. §437e. There is no suggestion here of subordination of the Executive. Nor can we follow the Attorney General in reading subserviency to the Congress into the reservation of power to either House to disapprove legislative rules or regulations issued pursuant to a delegation of legislative power. The arrangement substantially parallels the old provision for disapproving Presidential reorganization plans and the current statutes governing

rules issued by this Court. 5 U.S.C. §906; 28 U.S.C. §§2072, 2075. Senator Scott, who initiated the plan, and other members of Congress repeatedly described the FEC as an "independent commission."* The words with which the Court described the Federal Trade Commission fit precisely:

> The commission is to be non-partisan; and it must, from the very nature of its duties, act with entire impartiality. It is charged with enforcement of no policy except the policy of the law. *Humphrey's Executor* v. *United States*, 295 U.S. 602, 624 (1935).

The question thus comes down to whether the Constitution imposes a rigid rule that all the members of an independent commission performing duties not belonging exclusively to the Executive Department must be appointed by the President, even though his personal interests and partisan loyalties will be involved in much of the Commission's business and his sole selection of all the members must tend to reduce public confidence in the impartiality of decisions favoring his interests.

The problem facing Congress was far from abstract. The six voting members of the Commission were to be named in 1975. In November 1976, a President and Vice President, one third of the Senate, and the entire membership of the House of Representatives would be elected. The incumbent President would be seeking nomination and election. He would be leading his Party in all the campaigns for Senator and Representative. The six new commissioners would be rendering interpretations of a new law which might well be thought to injure one major party and assist the other.

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* *See* 120 Cong. Rec. S18525 (daily ed. Oct. 8, 1974) (remarks of Sen. Scott); *Id.* at H10328 (Oct. 10, 1974) (Rep. Hayes); *Id.* at H10331 (Rep. Armstrong); *Id.* (Rep. Frenzel); *Id.* at H10344 (Rep. Heckler).

The six members to be appointed might soon be required to certify whether the incumbent President was entitled to matching funds under 26 U.S.C. §§9033-9036 in seeking nomination, and later, to determine whether his Party and he, himself, were eligible for payments under 26 U.S.C. §§9003-9005, 9008. It would be their duty to make careful audits of his accounts and obtain repayment when found due. It would also be their duty to receive other reports from him as a candidate, to determine how to publish them, and to scrutinize them for violations. How then should the six men be chosen? No one free from constitutional limitations would suggest that the soundest course would be to have all six chosen by the chief political figure with whom they must deal and whose behavior they must scrutinize. Nor would anyone argue that allowing the most powerful contestant to name all the stewards charged with enforcing the rules would be the best way to build public confidence in the stewards' rulings. To face such ancient truths of human conduct casts no aspersion upon any individual. The unsoundness of any such arrangement might appear less dramatic if a time were to come when an incumbent President named fewer than all the members, but the inherent weakness would remain.

The method of selection chosen by Congress not only avoids the pitfalls of Presidential selection but does as much as possible to build confidence in the Commission's independence and freedom from bias, short of the probably unconstitutional step of providing that the members be named by this Court. Section 437(c)(3) includes an unusual declaration emphasizing the need for public confidence in the members' freedom from every sort of influence:

> Members shall be chosen on the basis of their maturity, experience, integrity, impartiality, and good judgment and shall be chosen from among individuals who, at the

> time of their appointment, are not elected or appointed officers or employees in the executive, legislative, or judicial branch of the Government of the United States.

Dividing the authority to select the six voting members of the Commission among three high ranking officials, including the President of the United States, was calculated to remove the Commission still further from any single source of influence and to guard against any one set of mind. Still further assurance is contained in the requirement that the President *pro tem* of the Senate and the Speaker of the House select "upon the recommendations of the majority leader . . . and the minority leader . . ."

It surely cannot be the position of either appellants or the Attorney-General that the constitutional prerogatives of the President are shaken if he lacks power to appoint the persons who will be charged with issuing regulations and giving interpretative opinions affecting the President's candidacy, who will determine the President's eligibility for public financing, and who will later scrutinize his accounts and reports. Few Presidents would wish so unpleasant a duty. In the end, therefore, the constitutional question is simply whether some abstract theory prevents an unfamiliar solution to a new and unique problem.

Nothing in the theory of the separation of powers imposes this rigidity. Eighteenth century students of Locke and Montesquieu differed in their understanding of the doctrine, but the prevailing view emphasized that the doctrine was not to be rigidly, but flexibly, applied. Sharp, *The Classical American Doctrine of "The Separation of Powers,"* 2 U. Chi. L. Rev. 385 (1935). Madison himself wrote in No. 47 of the Federalist Papers that—

> His [Montesquieu's] meaning as his own words impart, and still more conclusively as illustrated by the example in his eye, can amount to no more than this,

> that where the WHOLE power of one department is exercised by the same hands which possess the WHOLE power of another department, the fundamental principles of a free constitution are subverted. *The Federalist,* No. 47, Fairfield ed. 1969, p. 140.

Madison's appreciation of the need for flexibility extended to the appointing power. He did indeed observe, as stated by appellants (Br. p. 196) that—

> each department should have a will of its own, and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of members of the others. *Id.* No. 51, p. 159.

A few sentences later, however, he added a qualification omitted from appellant's selection which we think should govern here:

> Perhaps such a plan of constructing the several departments would be less difficult in practice than it may in contemplation appear. Some difficulties, however, would attend the execution of it. *Some deviations, therefore, from the principle must be admitted.* (emphasis added). *Ibid.*

This pragmatic approach has characterized the disposition of appointing authority from the beginning. The Chief Executive and the heads of executive departments make most appointments, but the courts have upheld delegation of the appointing authority to the Judicial Department in the case, not only of judicial functionaries such as clerks and commissioners, *In re Hennen,* 13 Pet. 230 (1839); *Rice* v. *Ames,* 180 U.S. 371, 378 (1901), but of executive officials such as supervisors of elections and a temporary United States Attorney. *Ex parte Siebold,* 100 U.S. 371, 397-398 (1879); *United States* v. *Solomon,* 216 F.

Supp. 835 (1963). Congress has repeatedly imposed a wide variety of restrictions upon the President's freedom of selection, even confining the appointment to a person or persons nominated by others. See *Myers* v. *United States*, 272 U.S. 52, 264-275 (1926) (Brandeis, J. dissenting). From the time of the Second Congress, Congress has occasionally named the individuals to perform important functions by assigning the functions to the holders of another office even though the new duties were in nowise related to the old. E.g., Act of May 8, 1792, 1 Stat. 281, creating a commission consisting of the Chief Justice of the United States, the President of the Senate, the Secretary of State, the Secretary of the Treasury and the Attorney General "to purchase the debt of the United States." See for a collection of similar instances, Note, *Power of Appointment to Public Office under the Federal Constitution*, 42 Harv. L. Rev. 426 (1929). Congress has also named individuals to public positions and specified ranks in the Armed Forces. *Ibid.* The President has been held generally to have the sole right of removal, *Myers* v. *United States*, 272 U.S. 52 (1926), but the power is denied where the duties of the office demand a high degree of independence, *Humphrey's Executor* v. *United States*, 295 U.S. 602 (1935); *Wiener* v. *United States*, 357 U.S. 349 (1958). The sum of legislative and executive practice, and of the rare judicial rulings, is that the President, generally speaking, exercises both the power to appoint and to remove, but deviations from the principle must be permitted when the special occasion requires.

The language of Article 2, Section 2, Clause 2 (p. 107 above) will bear the interpretation which time and experience have put upon it. Initially, there was debate over whether the Constitutional Convention should adhere to the method of legislative appointment provided by the Articles of Confederation and many State Constitutions or should

give the appointing power to the President. The issue seems to have been compromised by the addition of the proviso: "Congress may by law . . . ," for there was little subsequent discussion.

The proviso can be given a restrictive interpretation denying Congress the power to make appointments even though it permits the Congress to delegate the appointing power to one of a variety of officials. The words can equally well be taken to assume that Congress may of course exercise itself a function which it can vest in one of designated officials. No question of principle was at stake, only efficiency and convenience. Although Madison argued against the power, other members of the Convention held that it was indeed reserved to Congress. 1 Ann. Cong. 472, 504, 513 (1789). As we have shown, time and experience have given the words the latter meaning. The power of Congress was also sustained in the only judicial ruling to come to our attention. *United States* v. *Cooper*, 20 D.C. 104, 124 (1891). See generally, Note, *Power of Appointment to Public Office Under the Federal Constitution*, 42 Harv. L. Rev. 416 (1929).

Under Section 437c the President of the United States, the Speaker of the House of Representatives, and the President *pro tem.* of the Senate make the initial selections, but the vote of a majority in both Houses of Congress makes the appointment the action of Congress at the final step.

We address ourselves only to appointments to an independent agency, and only to the unique circumstances in which the appointments are to a watch dog commission which must scrutinize the conduct of the President and members of Congress as political candidates, and deal with them at arms' length. In appointments to positions in the Executive Department the principle stated by Madison —that the members of each department should be as little

agents as possible in the appointment of members of the other—supports the FECA practice. Madison was concerned with the dangers of excessive loyalty to the appointing authority. In providing for FECA that danger dictated the unique division of authority which Congress achieved.

In creating the Federal Elections Commission to implement one of the great measures of political reform introduced in this century Congress faced a special occasion. The Commission will occupy a unique role in our politics and government. It can succeed only if its complete independence and freedom from bias or predilection is trusted by both rival candidates and citizenry. Dividing the power of appointment so that no more than two of six members would ever owe their position to a single source is an important step in enabling the Commission to build that essential trust.

Conclusion

The judgment should be affirmed.

Respectfully submitted,

ARCHIBALD COX
Counsel for Amici Curiae

October 1975

MOTION FILED

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

Nos. 75-436
75-437

JAMES L. BUCKLEY, ET AL., *Appellants*

v.

FRANCIS R. VALEO, ET AL., *Appellees*

On Appeals from the United States Court of Appeals for the District of Columbia Circuit and the United States District Court for the District of Columbia

MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE
and
BRIEF FOR UNITED STATES SENATOR LEE METCALF

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MOTION OF UNITED STATES SENATOR LEE METCALF TO FILE A BRIEF AS AMICUS CURIAE

United States Senator Lee Metcalf respectfully requests leave of this Court to file the accompanying brief *amicus curiae,* which is restricted to an analysis of the public financing provisions contained in the Federal Election Campaign Act of 1971 (Pub. L. 92-225, 86 Stat. 3, Codified in Titles 2, 18, 47, U.S.C.—hereinafter referred to as "the FECA"), the Federal Election Campaign Act Amendments of 1974 (Pub. L. 93-443, 83 Stat. 1263 Codified in Titles 2, 5, 18, 26, and 47, U.S.C.

—hereinafter referred to as "the FECA Amendments") and Subtitle H of the Internal Revenue Code of 1954 (Pub. L. 92-178, 85 Stat. 562 as amended by Pub. L. 93-53, 87 Stat. 138, as amended by the FECA amendments 26 U.S.C. §§ 9001 *et seq.*—hereinafter referred to as "Subtitle H"). Said brief *amicus curiae* supports certain propositions advanced by appellants and also supports at least one position expected to be advanced by appellees. It is filed in accord with Rule 42(2) of the Rules of this Court. Written consent of counsel for all parties, including the written authorization of the Solicitor General, has been obtained and true copies of said letters of consent have been filed with the Clerk of this Court.

The constitutional issues before this Court in the instant action are at the very heart of our democratic process in that they touch upon almost every facet of political participation and expression. Among these issues are certain questions of first impression regarding the procedures by which an individual becomes a candidate for Federal elective office and can solicit or receive public monies for such a candidacy. Movant submits that his legislative, political and practical experience regarding such issues can considerably assist this Court's deliberation in the instant case.

Movant is a United States Senator from the State of Montana and is a citizen of the State of Montana and of the United States and is eligible to vote in elections for the office of President of the United States. He has a long standing personal and legislative interest in public financing procedures for elections which dates back to involvement with the formulation of the Presidential Election Campaign Fund Act of 1966, Pub. L. 89-809, 80 Stat. 1539, and introduction of one of the

first comprehensive public financing proposals for federal elections in the Congress (S. 1390, 90th Cong., 1st Sess.)

Movant took part in this action below by submitting a brief *amicus curiae* and by participating in oral argument through counsel. See *e.g. Buckley* v. *Valeo,* No. 75-1061, U.S.D.C.A., Aug. 15, 1975, Slip Op. at 1505, 1561 and 1605.

While Movant believes and argues that the public financing provisions cited above are unconstitutional, Movant has a special concern that, if this Court so holds, neither the holding nor the Court's language should preclude the Congress from devising and enacting a public financing reform which does not contain the flaws of the challenged statutes.

For the above reasons, this motion to file the accompanying brief *amicus curiae* should be granted.

Respectfully submitted,

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October, 1975

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Fleishman, *Public Financing of Election Campaigns: Constitutional Constraints on Steps Toward Equality of Political Influence of Citizens*, 52 N.C.L.R. 349 (1973) 19, 43, 45

Gunther, The Supreme Court Review, 1971 Term—Forward *In Search of Evolving Doctrine on a Changing Court: A Model for a New Equal Protection*, 86 Harv. L. Rev. 1 (1972) 35

Mazmanian, *Third Parties in Presidential Elections* (1974) 35

Note, *The Less Restrictive Alternative in Constitutional Adjudication: An Analysis, A Justification, and Some Criteria*, 27 Van. L. R. 971 (1974) 45, 51

Redish, *Campaign Spending Laws and the First Amendment*, 46 N.Y.U.L.R. 900 (1971) 43

Rosenthal, *Campaign Financing and the Constitution*, 9 Harv. J. L. 359 (1972) 6, 23, 43

Schwarz, *Public Financing of Elections: A Constitutional Division of Wealth*, American Bar Association, Special Comm. on Election Reform Publication (1975) 10, 19

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

Nos. 75-436
75-437

JAMES L. BUCKLEY, ET AL., *Appellants*

v.

FRANCIS R. VALEO, ET AL., *Appellees*

On Appeals from the United States Court of Appeals for the District of Columbia Circuit and the United States District Court for the District of Columbia

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BRIEF FOR AMICUS CURIAE UNITED STATES SENATOR LEE METCALF [1]

This brief is filed by United States Senator Lee Metcalf contingent upon the Court's granting the foregoing Motion for Leave to File a Brief Amicus Curiae. His interest is set forth in that Motion.

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[1] Amicus Metcalf has asked leave of this Court to address only the constitutional questions presented with respect to the public financing provisions in the FECA, the FECA Amendments, and Subtitle H.

SUMMARY OF ARGUMENT

Representative democratic government should ensure for all citizens, to the maximum extent feasible, equal access to, and an equal opportunity to participate in, the process by which officials of the government are selected. Public financing of elections is a potentially effective way to achieve this objective. Procedures can be enacted within the bounds of the Constitution to utilize public monies to significantly reduce the disproportionate influence of certain segments of society in the nomination and election of public officials. Such procedures also can constructively assist in the presentation to the electorate of diverse viewpoints.

Although Congress has the authority to provide for public subsidization of Federal election campaigns, elements of the statutes challenged in the instant action substantially abridge certain constitutionally protected rights and freedoms, and therefore should be subjected to strict judicial scrutiny.

Specifically, the public financing provisions of the challenged statutes violate First Amendment rights of freedom of speech and association. Minor parties, new parties, and independent candidates are discriminated against by the inclusion of eligibility and allocation formulae that violate Fifth Amendment due process—equal protection requirements. Less affluent members of society are invidiously denied an equal opportunity to participate in the electoral process. The general election public financing provisions of the challenged statutes give the major parties a permanent monopoly over the presidency by freezing the political status quo. Such unequal intervention by the government runs directly counter to numerous constitutional

safeguards that ensure all citizens a right to equality of opportunity to participate in the political process. These challenged public financing provisions are neither rationally related in fact to the permissible objectives sought by their enactment nor the least restrictive means available to accomplish the reforms sought.

This Court should reverse the courts below and find the challenged public financing provisions unconstitutional.

ARGUMENT

I. CONGRESS HAS AUTHORITY UNDER THE CONSTITUTION TO REGULATE PRESIDENTIAL ELECTIONS AND TO ENACT PUBLIC FINANCING PROCEDURES FOR SUCH ELECTIONS

The history of involvement of the legislative branch and the judicial branch in the area of election law reform and regulation is extensive.[2]

Article I, § 4 of the Constitution states:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations. . . .

This Court as early as 1880[3] and 1884[4] upheld fed-

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[2] See, *Congressional Digest* (February, 1974), The Question of Federal Financing of National Election Campaigns at 36.

[3] *Ex parte Siebold*, 100 U.S. 371 (1880).

[4] *Ex parte Yarbrough*, 110 U.S. 651 (1884). It is interesting to note that this decision found that a right to protect the election of

eral statutes forbidding corruption, fraud and violence in Congressional elections.

In *Smiley* v. *Holm,* 285 U.S. 355 (1932) this Court considered the scope of Congressional authority under Article I, § 4 with Chief Justice Hughes stating for a unanimous Court that the words "Times, Places and Manner" as found therein are:

> comprehensive words [which] embrace authority to provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns; in short, to enact the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved.[5]

The Court in *Smiley* further concluded that Article I, Section 4 gave the Congress "a general supervisory power over the whole subject [of congressional elections]."[6]

The proposition that federal control exists over presidential elections was established by this Court's decision in *Burroughs* v. *United States,* 290 U.S. 534 (1934). This position has been reaffirmed in succeeding decisions. *Oregon* v. *Mitchell,* 400 U.S. 112, 124 (1970).

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federal officials could be sustained as an inherent attribute of sovereignty—at 666-667.

[5] 285 U.S. 355, 366 (1932).

[6] *Id.* 367.

In *United States* v. *Classic,* 313 U.S. 299 (1941), this Court overturned *Newberry* v. *United States,* 256 U.S. 232 (1921),[7] and held that Congress has authority to regulate primaries. An eight-man majority held ". . . the authority of Congress, given by [Art. I] § 4, includes the authority to regulate primaries when, as in this case, they are a step in the exercise by the people of their choice of representatives in Congress."[8]

Considerable authority supports the power of Congress to expend public monies for election reform.

Article I, § 8, Cl. 1 of the Constitution states:

> The Congress shall have the Power To lay and Collect Taxes . . . to . . . provide for the . . . general Welfare of the United States.

As found by the Court below, this provision does not restrict Congress to express grants of legislative power found in the Constitution. *Buckley* v. *Valeo* No. 75-1061 U.S. D.C.A., Aug. 15, 1975 Slip Op. 1561. *See* also, *United States* v. *Butler,* 297 U.S. 1, 66 (1936); *Steward Machine Co.* v. *Davis,* 301 U.S. 548 (1937); and *Helvering* v. *Davis,* 301 U.S. 619 (1937).

Congress has wide ranging authority to determine what expenditures will promote the general welfare. Election reform and control is a permissible objective for expenditures under such authority. *Bullock* v. *Carter,* 405 U.S. 134, 148-149 (1972).[9]

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[7] This Court split four to four on whether Congress had the constitutional power to regulate primaries.

[8] 313 U.S. 299, 317 (1941).

[9] See *Buckley* v. *Valeo,* No. 75-1061 U.S.D.C.A., Aug. 15, 1975 Slip. Op. 1561. See also, *U.S. Civil Service Commission* v. *Natl. Assoc. of Letter Carriers,* 413 U.S. 584 (1973); *Pipefitters Local 562* v. *U.S.,* 407 U.S. 385 (1972); and *United Public Workers* v. *Mitchell,* 330 U.S. 75 (1947).

Accordingly, there is considerable precedent for the Congress to regulate not only presidential primary and general elections, but also to initiate public financing reforms.[10]

II. THE PUBLIC FINANCING PROVISIONS INCORPORATED IN THE FECA, THE FECA AMENDMENTS AND SUBTITLE H VIOLATE CERTAIN FUNDAMENTAL CONSTITUTIONAL RIGHTS INCLUDING THE RIGHT TO EQUALITY OF OPPORTUNITY TO PARTICIPATE IN THE ELECTORAL PROCESS

The process by which a democratic government selects its public officials is the very heart of its legitimacy. The judicial branch has assumed a particularly important role in guaranteeing that all citizens have an equal opportunity to participate in the electoral process.

In *Williams* v. *Rhodes* 393 U.S. 23 (1968), this Court specifically recognized that fundamental rights are involved in varied ways in the electoral process and that a strict scrutiny test should be applied to state infringement in this area. This Court in *Rhodes* rejected the state's argument that it had a legitimate interest in limiting the number of parties on the ballot to avoid political fragmentation on the grounds that the challenged statute made it "virtually impossible" for a new or minor party to gain access to the ballot.[11] In invalidating the State of Ohio's ballot access law, the majority held:

> "The right to form a party for the advancement of political goals means little if a party can be kept off the election ballot and thus denied an equal opportunity to win votes. 393 U.S. 23, 31 (1968)

[10] Professor Albert J. Rosenthal, in *Campaign Financing and the Constitution*, 9 Harv. J. L. 359 (1972) makes a compelling argument that the commerce clause, Art I, § 8, Cl. 3, and the necessary and proper clause, Art. I, § 8, Cl. 18, may also serve as authority for public financing of elections.

[11] 393 U.S. 23 at 24.

The importance of the strict scrutiny test in the electoral area has been recently reaffirmed in *Kusper* v. *Pontikes,* 414 U.S. 51 (1973), where this Court struck down a State of Illinois statute which prohibited an individual from voting in a primary of a political party if he had voted within the preceding twenty-three months in another party's primary. The majority in *Kusper* recognized that, as in *Rhodes,* the mere showing of a legitimate state interest (the prevention of raiding by parties in *Kusper*) is insufficient if a statutory scheme substantially restricts a voter's freedom of association and ability to participate effectively in the political process.

Application of the strict scrutiny standard in the instant action will clearly show that the challenged statutes should be invalidated.

A. The Primary Election Public Financing Provisions of the Challenged Statutes Invidiously Deny the Less Affluent Members of Society an Equal Opportunity To Participate in the Federal Electoral Process, and Should Be Strictly Scrutinized.

> *[W]e cannot close our eyes to the fact . . . that the practical influence of the choice of candidates at the primary may be so great as to affect profoundly the choice at the general election . . . .*[12]

In *Bullock* v. *Carter,* 405 U.S. 134, 144 (1972), this Court, in invalidating a Texas filing fee scheme, held that legislative classifications which deny certain persons an equal opportunity to participate effectively in the political process on the basis of wealth must be

[12] *U.S.* v. *Classic,* 313 U.S. 299, 319 (1941).

"closely scrutinized, and found reasonably necessary to the accomplishment of legitimate state interests in order to pass constitutional muster." Similarly, in *Lubin* v. *Panish,* 415 U.S. 709, 716-18 (1974) this Court in reviewing a filing fee system similar to that reviewed in *Bullock* indicated that legislation which classifies candidates as serious or frivolous solely on the basis of their ability to raise funds invidiously denies certain voters an equal opportunity to elect the candidate of their choice and should be subjected to strict scrutiny.

Amicus Metcalf submits that the primary election provisions of Subtitle H, like the filing fees invalidated in *Bullock* and *Lubin* v. *Panish,* deny the less affluent members of society an equal opportunity to elect the candidate of their choice, and therefore should be subjected to strict judicial scrutiny.

Under this chapter of Subtitle H[13] any individual who seeks nomination for elections to be President and, (a) takes the action necessary under the law of a state to qualify for nomination for election, (b) receives contributions or incurs qualified campaign expenses, or (c) gives consent for any other person to receive contributions or to incur qualified campaign expenses in his or her behalf is defined as a candidate. 26 U.S.C. § 9032(2) (1975 Pam. No. 1).

As noted *infra,* the Secretary of the Treasury is directed to maintain a separate account for presidential primaries. After a determination has been made by the Secretary that there are sufficient funds to cover the requirements of the Presidential Election Campaign Act

[13] Chapter 96, the Presidential Primary Matching Payment Account, Pub. L. 93-443, 88 Stat. 1297, 26 USC § 9031 *et seq.*

(the general presidential election fund),[14] payments are to be made from the matching fund account upon certification of the Federal Election Commission. 26 U.S.C. § 9036 (1975 Pam. No. 1). The Secretary is required to "achieve an equitable distribution" of funds when making payments to candidates of the same party considering "the sequence in which such certifications are received." 26 U.S.C. § 9037(b) (1975 Pam. No. 1) Presumably, therefore, early certification is desirable.[15]

Assuming sufficient funds are available, the federal government will match, dollar for dollar up to $250 per contributor, the funds an eligible candidate raises from private contributions for use in primary campaigns. 26 U.S.C. § 9034. To become eligible for these matching grants, a candidate must raise $5,000 in private contributions in each of 20 states,[16] or a total of $100,000.

[14] Pub. L. 92-178, 85 Stat. 563, as amended by Pub. L. 93-443, 26 U.S.C. §§ 9001 *et seq.*

[15] The amount of discretion given the Secretary of Treasury, undoubtedly a political appointee of a "major" party, to administer the public financing provisions of FECA, the FECA Amendments and Subtitle H is considerable and gives rise to serious constitutional and practical questions regarding the operation of this statutory scheme. For example, how is the Secretary to determine what amount of funds should be set aside for post election payments for new parties? How is the Secretary to allocate funds for primary elections if insufficient monies are accumulated from the income tax return check-offs (26 U.S.C. 6096)?

[16] "As with the geographical distribution requirements in the Presidential Election Campaign Fund Act [Chapter 95] this requirement appears unconstitutional. The requirement that seed money be raised in 20 states is even less rational than the requirement that a candidate be on the ballot in ten states [the requirement in Chapter 95]. Certainly, there is no relationship to ultimate success in the primaries. . . . The statutes would permit a candidate to obtain matching funds if he received the necessary contributions from people in the 20 smallest states while excluding candidates

Id. at § 9033. The total amount of public funds such a qualified candidate can receive is $5 million. 26 U.S.C. § 9034 (1975 Pam. No. 1), and 18 U.S.C. 608(c)(1)(a).

This matching grant system is designed and will operate to grant some candidates substantially greater subsidies than are accorded others. It *prima facie* discriminates against candidates supported by the less affluent segments of the population.

Assume *arguendo* that X and Y are candidates in an early presidential primary, and that in this primary each is permitted to spend $300,000. Assume further that to date candidate X has been able to solicit contributions from 10,000 voters, evenly distributed over 20 states, none of whom can afford to contribute more than $5 to his campaign. Because he has not been able to raise at least $100,000, X would not qualify for matching grants, and would be left with only $50,000 with which to continue his efforts to attract increased voter support.

Assume that Candidate Y, on the other hand, has solicited support from 1,500 voters, evenly distributed

who obtained contributions in the 19 largest states. Nevertheless, balancing the interests, since it is in the area of primaries where the greatest threat to the waste of public funds arises, some geographical restrictions might be appropriate. It is submitted, however, that these restrictions should be keyed to the possibility of ultimate success at the election with reference to the electoral college system. A redrafted statute which contained showing of interest requirements in a number of states determined as a function of a low percentage of electoral college votes (although probably politically unacceptable because of the significance in any such formula of the populated states) would be more appropriate and, more importantly, would more adequately protect the interests of the public purpose without unnecessarily interfering with voters' rights." Schwarz, *Public Financing of Elections: A Constitutional Division of Wealth,* American Bar Association, Special Comm. on Election Reform Publication at 67-68 (1975).

over 20 states, all of whom can afford to contribute $100 to his campaign fund. Under Subtitle H, candidate Y is eligible for matching grants and would be entitled to a $150,000 subsidy. When added to the $150,000 he has received from private contributors, this subsidy would give him the maximum amount he is permitted to spend in the primary, or $300,000.

In short, under the primary election provisions of Subtitle H candidate X, who has more than five times the voter support of candidate Y, would have only 1/6th the amount of funds available to candidate Y solely because of the relative inability of his supporters to contribute. Thus, on the basis of the relative wealth of their supporters, the primary election provisions of Subtitle H will operate to increase candidate Y's chances of winning this early primary, and of ultimately securing the party's nomination, while correspondingly diminishing candidate X's chances.[17]

Amicus Metcalf respectfully submits that it is thus clear that the primary campaign provisions of Subtitle H, like the filing fees invalidated in *Bullock* and *Lubin* v. *Panish,* invidiously discriminate against and *prima facie* deny the less affluent members of this society an equal opportunity to elect the candidate of their choice.[18]

[17] See *infra* at 18-29 for a discussion of the data which indicates that differential allocation of campaign subsidies, whether according to electoral results or pursuant to a matching grant system, denies certain candidates an equal chance of winning, which in turn denies their supporters an equal opportunity to elect the candidate of their choice.

[18] Hypotheticals much more extreme than the above certainly are possible and probable. See n. 19 *infra.*

Further, such a discriminatory matching system as contained in Chapter 96 is *contra* to the equal protection "one man-one vote" principle[19] developed by *Baker* v. *Carr,* 369 U.S. 186 (1962) and its progeny.[20] As noted by this Court "the only weighting of votes sanctioned by the Constitution concerns matters of representation, such as the allocation of Senators irrespective of population and the use of the electoral college in the choice of a President . . . But once the class of voters is chosen and their qualifications specified, we see no constitutional way by which equality of voting power may be evaded." *Gray* v. *Sanders,* 372 U.S. 368, 380, 381 (1963).

Amicus Metcalf concedes that the challenged public financing statutes in the instant action only concern the offices of president and vice president and that the electoral process for said offices does involve a somewhat weighted selection process through the operation of the electoral college. Amicus Metcalf does *not,* however, interpret the electoral college provisions (Art. II, § 1 Cls. 1-4) of the Constitution to permit the type of discrimination contained in the challenged statutes for presidential *primary* elections, which are not mentioned anywhere in the Constitution.

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[19] As discussed above, the $250 "triggering mechanism" of Chapter 96 is highly discriminatory. For example an individual only able to contribute $1 to a candidate would be able to generate $1 of potential public funding (assuming the candidate could ever meet the $100,000 threshold of contributions of $250 or less in at least 20 states). An individual able to contribute $250 to a qualified candidate would be able to "trigger" $250 in public money. A disparity factor of 250.

[20] See *e.g. Gray* v. *Sanders,* 372 U.S. 368 (1963), *Reynolds* v. *Sims,* 377 U.S. 533 (1964); *Wesberry* v. *Sanders,* 376 U.S. 1 (1964); *Kirkpatrick* v. *Preisler,* 394 U.S. 526 (1969) and *Wells* v. *Rockefeller,* 394 U.S. 542 (1969).

Even if one were to conclude that an analogy could be drawn from the electoral college weighting provisions for presidential general elections and primary elections, Amicus Metcalf submits the type of discrimination evidenced by the challenged statutes is of a higher degree as it affects the *formation* of political parties and the *selection* of candidates. As this Court held in *Williams* v. *Rhodes:*

> The right to form a party for the advancement of political goals means little if a party can be kept off the election ballot and thus denied an equal opportunity to win votes. 393 U.S. 23, 31 (1968)

Accordingly, the primary matching fund provisions of Chapter 96 of Subtitle H should be strictly scrutinized and found to be violative of the Constitution.

B. The General Election Public Financing Provisions of the Challenged Statutes Should Be Strictly Scrutinized.

1. The general election public financing provisions of the challenged statutes substantially abridge and unconstitutionally condition the First Amendment right to free and effective political association.

It is well established that the First Amendment guarantees individuals a right to *free* and *effective* association with the political organization or party of their choice. *Kusper* v. *Pontikes,* 414 U.S. 51, 56-57 (1973). This Court has held that the right to associate for the advancement of political ideas ranks "among our most precious freedoms," and consistently has subjected legislation which burdens or inhibits the exercise of that right to strict scrutiny. *Kusper* v. *Pontikes, supra; Williams* v. *Rhodes,* 393 U.S. 23, 30 (1968).

Appellees may attempt to distinguish this line of precedent on the ground that differential allocation of

campaign subsidies does not deprive certain candidates of a place on the ballot, or otherwise deprive their supporters of the opportunity to nominate and vote for the candidate of their choice, but instead simply denies them equal access to certain government benefits. Such argument is insubstantial given that this Court has often held that First Amendment rights are protected from indirect as well as direct abridgement. *Perry* v. *Sinderman,* 408 U.S. 593 (1972); *Speiser* v. *Randall,* 357 U.S. 513 (1958), and *Frost & Frost Trucking Co.* v. *Railroad Commission,* 271 U.S. 583, 593-94 (1926).

The government may not, absent compelling justification, condition eligibility for benefits in a manner which inhibits the exercise or requires the surrender of the right to free and effective political association. *U.S.* v. *Robel,* 389 U.S. 258 (1967); *Shelton* v. *Tucker,* 364 U.S. 479 (1960). *See American Party of Texas* v. *White,* 415 U.S. 767 (1974) (Denying minor party candidates a place on absentee ballots is sufficient cause to warrant strict scrutiny.)

This Court has recognized:

> [I]f the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited. This would allow the government to produce a result which [it] could not command directly. *Speiser* v. *Randall,* 357 U.S. 513, 526. Such interference with constitutional rights is impermissible. *Perry* v. *Sinderman,* 408 U.S. 593, 597 (1972).

Amicus Metcalf submits that the general election provisions of Subtitle H unconstitutionally condition and otherwise impose substantial if indirect burdens

upon the First Amendment right to free and effective political association, and therefore should be subjected to strict judicial scrutiny.

Most significantly, the record establishes that differential funding of major, minor, and new political parties under Subtitle H is indeed *specifically intended* to deter or inhibit the exercise by potential presidential candidates of the right to free and effective political association.

Congressional committee reports indicate clearly that one of the primary purposes of the general election provisions of Subtitle H is to discourage or penalize candidates who prefer, for ideological or other reasons, to affiliate themselves with a minor or new political party rather than a major party. Commenting on the eligibility and allocation formulae relating to general election campaigns contained in Subtitle H, the Senate Rules and Administration Committee asserted that as the result of the operation of these formulae:

> . . . [a]*ll but fringe candidates would have an incentive to seek a major party nomination,* rather than run as a minor party candidate, so as to be eligible for the full level of public assistance in the general election. The bill would thereby have a cohesive effect, encouraging different factions to compete and work out coalitions within the framework of a basic two-party system.
>
> If a candidate's supporters clearly constitute a mere fringe group, with no prospect of appealing to a large mass of voters, then he may choose to run as a minor party candidate. But it is unlikely he would raise many matchable contributions, in the event his party had a primary. And in the general election, he will only be eligible for a grant based on his party's prior voting record. Sen. Rep.

No. 689, 93rd Cong., 2d Sess. at 8 (1974).[21] (Emphasis added)

The fact that Congress specifically intends Subtitle H to inhibit the exercise of the First Amendment right to free and effective political association by discouraging candidates from affiliating with a minor or new political party clearly warrants strict scrutiny of the provisions here in question.

The general election provisions of Subtitle H similarly inhibit the exercise of and unconstitutionally condition the first amendment rights of the *individual supporters* of minor and new party candidates. Under these provisions, unless there is a deficit in the fund from which campaign subsidies are to be drawn, the government provides a major party candidate the *total* amount he is permitted to spend. Thus, persons who support a major party candidate are effectively freed from the burden of contributing to his campaign. Those who support a minor or new party candidate, however, are denied this benefit on the basis of their political affiliations. Such persons must be willing and able to contribute funds for campaign purposes from their private resources in order to ensure that the candidate or political party of their choice enjoys financial support equal to that *the government* accords major party candidates.

Subtitle H denies the candidates and supporters of minor and new political parties equal access to govern-

[21] Although Subtitle H was substantially modified in other respects, the particular general election provisions here in question were not amended following the submission of Senate Report 93-689. Therefore the views expressed in the Report are relevant to the issue of Congressional intent or purpose presented by the instant case.

ment benefits *solely* because of the *particular* "choice" they make in exercising their First Amendment right to free and effective political association. The basis of this difference in treatment is not the number of supporters evidenced by or the relative size of a candidate's party. Subtitle H does not provide for a strict correlation between subsidies awarded and the current level of support a party enjoys.

In conclusion, the eligibility and allocation formulae relating to general elections embodied in Subtitle H are *specifically* intended to discourage or inhibit association with minor and new political parties, and to channel the expression of political ideas through the two major parties. Unless it is assumed that these formulae will not have their intended effect,[22] Subtitle H will force candidates affiliated with, or individuals who wish to support, a minor or new political party either to forego government benefits in order to follow the precepts of their political beliefs, or to abandon those beliefs in order to enjoy the fruits of those benefits. Such persons will be forced *by the federal government* to pay a higher price than the supporters of major party candidates to support effectively the candidate or political party of their choice.[23]

Accordingly, it is clear that the general election provisions of Subtitle H unconstitutionally condition and

[22] It should be noted that in *Speiser* v. *Randall*, 357 U.S. 513 (1958) this Court suggested that the imposition of a condition upon eligibility for government benefits similar to the conditions here in question would "inevitably" inhibit the exercise of First Amendment rights. The Court also emphasized that conditions upon government benefits which operate to inhibit the exercise of First Amendment rights cannot be sustained absent "compelling justification."

[23] See Discussion *infra* at Part II.C.

otherwise substantially inhibit exercise of the First Amendment right to free and effective political association.

2. The general election provisions of Subtitle H deny certain individuals an equal opportunity to elect candidates of their choice.

(a) Subtitle H Denies Minor and New Party Candidates an Equal Opportunity of Winning.

In numerous decisions this Court has held that participation in the electoral process, including exercise of the franchise, association with a political organization or party, and campaign activities designed to build an electoral coalition in support of the candidate of one's choice, is a matter of fundamental importance in our representative form of government. *Williams* v. *Rhodes,* 393 U.S. 23 (1968); *Harper* v. *Virginia Board of Elections,* 383 U.S. 663 (1966); *Reynolds* v. *Sims,* 377 U.S. 533 (1964). See also *Shakman* v. *Democratic Organization of Cook County,* 435 F.2d 267 (7th Cir. 1970) cert. denied 402 U.S. 909 (1971), modified on remand, 356 F. Supp. 1241 (N.D. Ill. 1972). Courts consistently have held that federal or state action which imposes substantial and unequal burdens on persons engaged in such activities must thus be subjected to strict judicial scrutiny. *Kramer* v. *Union Free School Dist.,* 395 U.S. 621 (1969); *Reynolds* v. *Sims, supra.* In particular, courts have been especially diligent in strictly scrutinizing measures which deny certain persons an equal *opportunity* to elect the candidate of their choice (for example, malapportionment schemes and ballot access laws).

Under Subtitle H of Chapter 95 a candidate is defined as an individual who has: (1) been nominated for

election for office of President or Vice President of the United States by a major party, or (2) qualified as a candidate of a political party for election to either office in ten (10) or more states.[24] If the Presidential Election Campaign Fund contains sufficient monies[25] major party candidates are entitled to receive *pre-election* subsidies for use in the general election campaign equal to the total amount they are permitted to spend—$20 million plus periodic adjustments for inflation. 26 U.S.C. §§ 9002(6), 9004(a)(1); 18 U.S.C. 608(c)(1)(B). (1975 Pam. No. 1)

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[24] "As noted, the definition of 'candidate' requires that a candidate of a minor party qualify on the ballot in ten or more states. This requirement would appear constitutional only if the Court tests the statute in the most liberal manner by use of the traditional rational relationship test, treating the legislation as an ameliorative act.

"Even under the traditional test, however, there would not appear to be any rational relationship between the number of states chosen, ten, and the chance of success of the candidate in the election through the electoral college. The Act does not require that the ten states have a significant number of electoral votes. Indeed, the statute would permit a candidate to receive public funding if he were on the ballot in the ten smallest states with a total of 34 electoral votes but exclude a candidate who had obtained ballot position in the nine largest states with a total of 245 electoral votes.

"Moreover, the effect of funding a minor party candidate who had obtained ballot position in ten states would be to further restrict other minor parties and new parties since once funded the minor party could then use the funds to attract voters in other states where fledging parties were attempting to gain recognition. It therefore would appear the geographical distribution requirements are unconstitutional" (footnotes omitted) Schwarz, *supra* n. 16 at 62-63. Also see Fleishman, *Public Financing of Election Campaigns: Constitutional Constraints on Steps Toward Equality of Political Influence of Citizens,* 52 N.C.L.R. 349, 393-394 (1973).

[25] See pp. 25-26 *infra* regarding availability of monies for Subtitle H distribution.

Candidates of minor political parties are entitled to *pre-election* subsidies only in an amount in proportion to their party's vote in the preceding presidential election and the average of the votes received by the major party candidates. 26 U.S.C. §§9002(7), 9004(a)(2). For example, this ratio would be 4:1 if the major parties received an average of forty (40) million votes and the minor party received ten (10) million votes. Thus, if in the next election each major party candidate is eligible for a $20 million subsidy, the minor party's candidate would be entitled to $5 million.

The candidate of a new political party is not eligible for any pre-election subsidization for campaign expenses.

Subtitle H not only accords a major party candidate a $20 million subsidy, but entirely frees the candidate of the need to expend substantial amounts of time, money, manpower, and other resources in fund-raising drives. Major party candidates can thus devote all their resources to the effort to attract voter support. Moreover, the record indicates that the availability of money early in the campaign significantly affects both a candidate's decision whether or not to run, and his ability to launch and sustain a successful campaign. Findings of fact, IIB, ¶¶13, 16.

In contrast, even if they proceed through private fund-raising to make up the difference between their subsidy and that accorded a major party candidate, minor and new party candidates will not have nearly as much money as a major party candidate *for use in attracting votes*. First, the most a minor party candidate can receive under Subtitle H is approximately $13

million.[26] This leaves the candidate $7 million short of the major party entitlement. Moreover, even if the candidate is able to make up that difference, he inevitably will have $4 million less than major party candidates to spend given that, on the average, 40% of the funds raised from private contributions must be used to cover fund-raising expenses. Finding of Fact IIB ¶50. In addition, minor and new party candidates will have to divert a substantial amount of time and energy, and the time and energy of their supporters, from the effort to win votes to the effort to attract contributions. See Findings of Fact III ¶¶13, 16.

The record establishes that the relative availability of money has some effect on the outcome of elections. Finding of Fact I, ¶4. Subtitle H is premised on Congress' judgment that the relative availability of time, manpower, and campaign resources other than money also has some effect on electoral results. See Senate Rep. 93-689 at 6. As demonstrated above, under Subtitle H major party candidates *inevitably* will be able to direct a substantially greater amount of money, time and manpower than minor or new party candidates to the effort to attract voter support as opposed to the effort to raise private contributions.

Defendants below concede that the need to solicit private contributions imposes a "demeaning and time-consuming" burden on presidential candidates. ID Br.

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[26] If the major parties in the preceding election received an average of 38 percent of the vote, and a minor party candidate 24 percent, the minor party candidate in the current election theoretically could receive 24/38 x 20 million dollars or approximately $12.6 million dollars. Therefore "at best" a minor party candidate will have to make up a $7.4 million difference. See p. 23-25 *infra*.

at 36-37. The Court of Appeals also recognized that the solicitation of private funds imposes substantial burdens on presidential candidates.

Finally, it is not likely that legislation designed to tip the scales in favor of major party candidates in order to discourage minor and new party candidacies will leave minor and new party candidates "better off" than they were under a system of private financing. *Cf.* Sen. Rep. 93-689 at 6-8. While Subtitle H may not guarantee a major party candidate electoral success, as intended it does substantially increase his chances of winning, and correspondingly diminishes a minor or new party candidate's chances.

(b) The Substantial Competitive Advantages Subtitle H Affords Major Party Candidates Are Not Offset by Post-Election Subsidies.

A candidate entitled to full pre-election subsidies knows from the start how much he has to spend, and is thus in an excellent position to manage his funds in that manner which best serves his strategic needs. Minor and new party candidates can put the hope of post-election subsidies to use only by borrowing money, and, in order to do so, they must persuade a lender to assume the risk that they might not receive enough votes to entitle them to post-election grants to repay such loans.

Post-election subsidies do not relieve minor and new party candidates or their supporters of the burden of fund raising, or of the need to campaign on issues that will attract money, as opposed to votes. Post-election grants thus clearly will not help a minor or new party candidate take his case to the voters.

In fact minor and new parties may never receive any post-election public funding under Subtitle H.

Section 9004 of the Federal Election Campaign Act provides that minor and new party candidates are entitled to post-election subsidies equal only to the lesser amount of: qualified expenses incurred, less contributions; or $20 million, less contributions received. 26 U.S.C. 9004(b). Additionally, this section mandates that the public monies received can only be used to defray qualified campaign expenses or to repay loans the proceeds of which are used to defray such expenses. 26 U.S.C. 9004(c) (1975 Pam. No. 1).

As Professor Albert J. Rosenthal has noted the reasoning behind post-election subsidies is inescapably reminiscent of "Catch 22".[27] Both major parties and new parties are presented with a choice whether to solicit contributions or rely on public financing. The only risk that the major parties run in relying on public financing is that there will not be enough funds in the public coffers for them to receive their full $20 million. However, for the new party, the choice is really a Hobson's choice. The new party shares the risk that there will not be enough public funds to go around, but also, since the new party only gets public financing after an election on a formula tied to its performance during the election, it must seek private financing if it is to have the funds necessary to get the votes necessary to get the public financing. The "Catch 22" of the post-election financing provisions is that the more private funds the new party obtains in order to get votes in order to get public financing, the less public financing the new party gets.

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[27] Rosenthal, *supra,* in n. 10, at 414.

To illustrate, hypothesize a slightly different set of facts from those stated in note 26 *supra,* i.e., major party X's candidate in the current election receives 50 percent of the vote; major party Y's candidate 26 percent of the vote, giving a major party vote average of 38 percent. New party Z's candidate receives 24 percent of the vote in the election. New party Z's candidate would appear to be entitled upon a cursory glance at Subtitle H to 24/38 x $20 million, or approximately $12.6 million. That amount is not necessarily how much new party Z's candidate receives, however. Assume new party Z's candidate received $10 million in contributions and incurred $15 million in qualified expenditures. Applying Section 9004 new party Z's candidate only receives $5 million [the lesser amount of: qualified expenses incurred ($15 million) minus contributions received $10 million) = $5 million; or the maximum presidential spending level permitted ($20 million) less contributions received ($10 million) = $10 million]. Keep all of the above factors and figures constant, except increase the amount of contributions received by new party Z's candidate to $12 million, and as a result new party Z's candidate receives even less in public monies: $3 million [the lesser amount of: qualified expenses incurred ($15 million) minus contributions received ($12 million) = $3 million; or maximum presidential expenditures ($20 million) minus, contributions received ($12 million) = $8 million.]

Thus, the difference of only two percentage points[28] between major party Y's 26 percent and new party Z's

[28] Amicus Metcalf questions whether the 25 percent threshhold in the statute is based on sound empirical data or is merely an arbitrary figure and not rationally related to any analytical finding by the Congress. Amicus Metcalf notes that a recent Gallup Poll shows that even one of the two "major" parties is now below the 25 per cent figure. American Institute of Public Opinion (The Gallup Poll), "GOP Affiliation Continues to Slide; Independents at Peak," Princeton, N.J.; Sept. 21, 1975.

24 percent means not only anywhere from $17 million to $15 million dollars in public funds prior to the election (major party Y would have received $20 million prior to the election), but also a considerable disadvantage to new party Z's candidate given the hard work and time required to raise contributions even to attract 24 percent of the vote. In fact, as noted above, the harder new party Z's candidate tries to raise pre-election contributions, and is successful, the greater he is penalized with respect to availability of post-election public money.

In addition, Subtitle H confronts new and minor parties with the distinct possibility that even though they might technically qualify for post-election public financing there may be no monies available. After a number of contested presidential primary elections, the Secretary of the Treasury—assuming no new party would receive five percent or more of the vote—may have reserved only enough money, $40 million, for the two major parties. Unless taxpayer participation in the check-off system significantly improves[29] such an election situation will confront a Secretary of the Treasury with many practical allocation problems.[30] And the above hypothetical may become a reality next

[29] Finding of Fact I, ¶ 72, 73, 74. Obtaining Congressional approval to appropriate more money for the fund may be an illusory remedy for new and minor parties given major party control of the Congress.

[30] Such an individual himself will undoubtedly be a political appointee of a major party immediately giving rise to conflict of interest questions.

year given the past level of support for the American Independent Party,[31] the abundance of presidential candidates[32] and the scarcity of funds available for public financing.[33]

The solution to this dilemma for new, and minor party candidates who want to avail themselves of public financing monies for general elections evidently is to go into debt, not concentrate on fund-raising and pray that money is left for post-election disbursement. Such a solution suggests the clear result and effect of this provision of Subtitle H: Foreclosure of public financing for general elections to all but candidates of the existing two major political parties.

(c) By Denying Minor and New Party Candidates an Equal Opportunity of Winning, Subtitle H Denies Certain Individuals an Equal Opportunity to Elect the Candidates of Their Choice.

While a candidate's interest in holding elective office might not be deemed sufficiently fundamental to trigger strict scrutiny of measures which deny him an equal opportunity of winning, this Court has often recognized that governmental action which affects candidates inevitably has a correlative impact on voters.[34] This holds true for Subtitle H. By denying minor and new party candidates an equal opportunity of winning,

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[31] Finding of Fact I, ¶ 85 indicates that Governor Wallace received 13.5 percent of the vote in 1968.

[32] As of September 23rd, 1975, 49 candidates for the presidency had filed with the Federal Election Commission Information Office.

[33] Id. n. 29 *supra.*

[34] *See e.g. Lubin* v. *Panish,* 415 U.S. 709, 716 (1974).

which is demonstrated *supra,* the general election provisions of Subtitle H substantially and invidiously deny their individual supporters an equal opportunity to elect a candidate of their choice.

Assume, *arguendo,* that X, Y, and Z are presidential candidates. X and Y are major party candidates entitled to full public funding, or $20 million. Z is a minor party candidate eligible for 20% of the major party entitlement, or $4 million.

Assume further that at the time these subsidies are distributed each candidate has 1,000 committed supporters, and that the remaining 7,000 of a total of 10,000 eligible voters are undecided. X and Y not only received a substantially larger subsidy than candidate Z, but both X and Y and their supporters have been *entirely* freed of the burden of raising private contributions. Thus, Subtitle H accords the committed supporters of major party candidate X and Y a greater opportunity than the committed supporters of minor party candidate Z to elect the candidate of their choice, and both X and Y clearly will have a better *chance* than Z of attracting enough of the undecided votes to win.

This proposition might also be stated in terms which more closely approximate the approach the courts have tended to take in malapportionment cases. *See e.g., Reynolds* v. *Sims,* 377 U.S. 533 (1957). In the three-party system described above, it is likely that more than one-half the votes eventually cast will be meaningless in the sense that the candidate for whom they are polled will lose. Yet, because minor party candidate Z has been denied an equal chance of winning, there is a higher probability that the votes of his committed supporters will be meaningless than there is that the votes

of X's and Y's committed supporters will be meaningless. Thus, by differentially allocating campaign subsidies, Subtitle H in effect places a higher value on the votes of those who support a major party candidate, and correspondingly dilutes the value of the votes of those who support a minor or new party candidate.

Storer v. *Brown,* 415 U.S. 724 (1974); *American Party of Texas* v. *White,* 415 U.S. 767 (1974), and *Jenness* v. *Fortson,* 403 U.S. 431 (1971), which have been cited by defendants below in support of the assertion that the general election provisions of Subtitle H are not invidiously discriminatory, are readily distinguishable. In those decisions, this Court carefully emphasized that, although it treated minor parties differently, the state did *not* require minor party candidates to bear burdens "inherently greater" than those imposed on major party candidates. As discussed above, the record in this case demonstrates clearly that unlike the measures in question in *Storer, American Party,* and *Jenness,* Subtitle H does require minor and new party candidates to bear burdens "inherently greater" than those imposed on major party candidates in order to attain access to campaign funding, to attract voter support, and to achieve electoral success. This in turn invidiously and substantially denies the individual supporters of minor or new political parties an equal opportunity to elect a candidate of their choice. *Lubin* v. *Panish,* 415 U.S. 709 (1974); *Williams* v. *Rhodes,* 393 U.S. 23 (1968).

It is thus clear that Subtitle H imposes invidious and substantially unequal burdens on the efforts of the supporters of minor or new party candidates to elect the candidate of their choice, and therefore should be subjected to strict judicial scrutiny.

3. The general election public financing provisions of the challenged statutes give two particular parties a permanent monopoly over the Presidency, freeze the political status quo, and otherwise invidiously discriminate against certain discrete and insular minorities.

> *"All political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority dissident groups, who innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted . . . The absence of such voices would be a symptom of grave illness in our society."* [35]

The record indicates that Subtitle H is *specifically* designed to give two particular parties—the Democratic and Republican—a permanent, as well as immediate electoral advantage, and it is likely to accomplish precisely that result.

If the Subtitle H general election public financing provisions had been in effect throughout our history it is doubtful that the Whig Party would have disappeared between 1852 and 1856, that the Republican Party would have been able to elect Abraham Lincoln in 1860, or that Teddy Roosevelt could have hoped to outpoll President Taft in his Bull Moose candidacy in 1912.[36] Under Subtitle H George Wallace and his American Independent Party would have received nothing in 1968,[37] while John Schmitz, the Party's candidate in 1972, would have received several million

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[35] *Sweezy* v. *New Hampshire,* 354 U.S. 234, 251 (1957).

[36] Finding of Fact I, ¶ 85.

[37] Id.

dollars as a result of his receiving only 1.3 percent of the vote.[38]

In the 1976 presidential race, *only* candidates of the Democratic and Republican parties will be eligible for pre-election public funding, and as major party candidates, they will be entitled to the full subsidization of their campaign expenses. Consequently, and as Congress specifically intends, all but "fringe" candidates will be strongly encouraged to seek either the Democratic or Republican nomination rather than run as a minor party candidate. *See* Sen. Rep. 93-689 at 8. This procedure thus increases the likelihood that the Democratic and Republican parties will field the "strongest" candidates, and by a wide margin outpoll any minor party candidates who do decide to run. The cycle would then be repeated in 1980, and thereafter. Thus, assuming that Subtitle H works the results *Congress intends,* starting in 1976 the Democratic and Republican parties will enjoy an effective and permanent control over presidential elections, and the public financing system to fund such elections.

Whatever disadvantages the candidates and supporters of minor and new political parties have borne under a system of private financing of campaigns have been the result of private decisions. Under Subtitle H, the *government* has taken action which invidiously denies the candidates and supporters of minor and new political parties an opportunity to participate in the electoral process on an equal basis with the candidates and supporters of the major parties.

Decisions previously rendered by this Court document the long history of prejudice against and official efforts to diminish the role of minor political parties,

[38] *See generally* Statistical Abstract of the United States, 1974.

(see *Williams* v. *Rhodes* and its progeny) and recognize that legislators have a substantial interest in and may be naturally inclined to enact measures which tend to ensure that persons of like persuasion will control the office of the President. *See Kramer* v. *Union Free School District,* 395 U.S. 621, 628 (1969). This Court has also recognized that discrete and insular minorities are particularly dependent upon close judicial supervision of governmental action. *See United States* v. *Carolene Prods. Co.,* 304 U.S. 144, 153 n.4 (1938) (dictum).[39]

C. The Tax Check-off System Incorporated in the Challenged Statutes Is Constitutionally Defective and Should Be Strictly Scrutinized.

26 U.S.C. § 6096 establishes presidential election campaign funds to be administered by the Secretary of the Treasury. Every individual, other than a non-resident alien, whose income tax liability for the taxable year is $1 or more may designate that $1 shall be paid into a presidential election campaign fund.[40]

Taxpayers so designating contributions to the fund are not permitted to select a specific political party[41]

[39] "[P]rejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry."

[40] In the case of a joint return of a husband and wife having an income tax liability of $2 or more, each spouse may designate that $1 shall be paid to the fund.

[41] *Pub. L. 91-53,* 87 Stat. 138, deleted the following from § 6096, "for the account of the candidates of any specified political party for President and Vice President of the United States, or if no specified account is designated by such individual, for several accounts for all candidates for election to the offices of President and Vice President of the United States."

or candidate to receive their contribution. Monies accumulated through this section are to be dispersed through Chapter 95 of Subtitle H, The Presidential Election Campaign Fund Act, (26 U.S.C. §§ 9001 et seq.), and Chapter 96 of Subtitle H, The Presidential Primary Matching Payment Account Act (26 U.S.C. §§ 9031 et seq.), and for presidential nominating conventions, (26 U.S.C. 9008).

The Court of Appeals stated in its opinion below:

> "The Congress has determined that providing public funding for the three stages of the Presidential selection process would advance the general welfare of the nation by reducing the reliance of Presidential candidates on large contributions, thus reducing their influence on the outcome of elections and on the operations of government. We are in no position to quarrel with that judgment." *Buckley* v. *Valeo,* Slip Op. at 1561.

Amicus Metcalf submits that implicit in the Court of Appeal's acceptance of Congress' determination that public financing of Presidential campaigns advances the general welfare is acceptance of the principle that persons participating in such funding process by means of the voluntary check-off system (26 U.S.C. § 6096) receive a benefit from the government. c.f., *Bullock* v. *Carter,* 405 U.S. 134, 148 (1972). This is of fundamental conceptual and practical importance, because it is basic that the means chosen by the government in making a benefit available cannot be such that the utilization of those means requires the surrender of constitutional rights. *United States* v. *Robel,* 389 U.S. 258 (1967) and *Perry* v. *Sinderman,* 408 U.S. 593 (1972). Notwithstanding this well established constitutional

limitation on governmental action, the Court of Appeals went on to state:

> ". . . Congress can establish a system which gives the taxpayer some choice—in affecting the total amount of public funds to be distributed on the Congressional formula—without going all the way to permit each taxpayer complete authority over the disposition of his dollar of tax obligation. *If the taxpayer wants to avoid any conception that some of 'his' tax money will benefit candidates he does not favor, then he can simply refrain from checking off his dollar for the Fund. Buckley* v. *Valeo,* Slip Op. at 1561-1562 (emphasis added).

Thus, the Court of Appeals recognized that some taxpayers must refrain from accepting the benefit which Congress has conferred on other taxpayers if they wish to exercise their First Amendment rights of free political association. But the Court below appeared to be oblivious to the prohibition against the government's creating a system of benefits that is conditioned upon a taxpayer's needlessly foregoing the exercise of First Amendment rights of free political association. And it is precisely because of such prohibition that the tax check-off system incorporated in 26 U.S.C. § 6096 should be found violative of the Constitution and invalidated.[42]

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[42] See pp. 13-18 *supra* for Amicus Metcalf's argument on the First Amendment right to effective political association.

III. THE PUBLIC FINANCING PROVISIONS INCORPORATED IN THE FECA, THE FECA AMENDMENTS, AND SUBTITLE H ARE NOT RATIONALLY RELATED TO, OR THE LEAST RESTRICTIVE MEANS OF ACHIEVING, THE PERMISSIBLE OBJECTIVES SOUGHT BY THEIR ENACTMENT.

A. The Public Financing Eligibility and Allocation Formulae Contained in the Challenged Statutes Are Not Rationally Related in Fact to the Permissible Objectives Sought by Their Enactment.

The pertinent legislative history indicates: 1) that the primary purpose of public financing of federal campaigns is to equalize opportunities for effective participation in the political process by minimizing the importance of personal wealth as a determinant of who becomes a candidate, who wins elections, and who enjoys access to elected officials; (*See* H.R. Rep. No. 1239, 93d Cong., 2d Sess. (1974) at 13-14); and 2) that the primary purpose of the particular eligibility and allocation formulae here in question is to identify and provide assistance to candidates with potential for attracting a "significant" level of voter support without subsidizing or encouraging "frivolous candidacies". *See* H.R. Rep. No. 1239 at 13. *See also* Sen. Rep. No. 689, 93d Cong., 2nd Sess. at 6-8. In addition, the record indicates that the general election and convention provisions of Subtitle H are intended to ensure the Democratic and Republican parties a permanent monopoly over the presidency, and to otherwise freeze the political status quo, by inhibiting affiliation with minor and new political parties. *See* discussion *supra* at 29-31.

Amicus Metcalf submits that, while the government has a permissible and indeed compelling interest in ensuring individuals an equal opportunity for effective participation in the electoral process and in preventing the subsidization or proliferation of frivolous candidacies, it is impermissible for the government to attempt to inhibit affiliation with minor or new political parties and to attempt to give two particular parties an effective monopoly over the presidency, *Williams* v. *Rhodes,* 393 U.S. 23, 32 (1968) or to otherwise attempt to freeze the political status quo. *Jenness* v. *Fortson,* 403 U.S. 431 (1971).

Accordingly, the issue presented in testing the differential funding provisions of Subtitle H against the "rational basis in fact" test [43] is whether defendants

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[43] Appellees may question whether the court should apply the traditional minimal rationality standard, or the more recently developed rational basis in fact test. However, it seems now generally agreed that the rational basis in fact approach is, for the majority of equal protection cases, the preferable analytical technique, see e.g., Gunther, The Supreme Court Review—1971 Term —*Forward: In Search of Evolving Doctrine on a Changing Court: A Model for a New Equal Protection,* 86 Harv. L. Rev. 1 (1972) and recent cases suggest that this Court is committed to an effort to apply this new standard in lieu of minimal rationality wherever feasible. *See e.g., James* v. *Strange,* 407 U.S. 128 (1972); *Eisenstadt* v. *Baird,* 405 U.S. 438 (1972).

Amicus Metcalf submits that the rational basis in fact test can and should be applied when testing the constitutionality of the classifications here at issue. It has been suggested that difficulties may arise in applying this "heightened rationality" standard where alleged differences between persons within and without the classification are subtle and not especially susceptible to empirical proof, or where the classification is experimental or otherwise of a character such that data as to possible differences among the various classes established will not become available unless the statute is allowed some period of operation. Gunther, *supra* at 47-48. But, while public campaign finance legislation is experimental, a great deal of data regarding the character of major, minor and new political parties; of candidates able to solicit private contributions as opposed to those who cannot; and of the probable effect of providing certain candidates more money than others, is presently available. *See e.g.,* Mazmanian, *Third Parties in Presidential*

have shown that those provisions are *in fact* rationally related to the government's legitimate interest in 1) ensuring equality of opportunity in the electoral process, and 2) identifying and providing assistance to candidates with potential for attracting a "significant" level of voter support without subsidizing or encouraging frivolous candidacies.

Amicus Metcalf submits that defendants below failed to meet this requirement, that the record *affirmatively* indicates that there is no rational basis in fact for the differential funding provisions here in issue, and that therefore each of those provisions should be invalidated.

1. *Presidential Primary Matching Fund Account*

In *Bullock* v. *Carter,* 405 U.S. 134 (1974), and again in *Lubin* v. *Panish,* 415 U.S. 709 (1974), this Court invalidated state imposed filing fee requirements on the grounds that a candidate's access to private funds, in and of itself, is not a certain test of whether his candidacy is serious or spurious. Under the primary campaign provisions of Subtitle H, a candidate's ability to raise private contributions is the sole determinant of both his eligibility for campaign subsidies, and the size of the grant he will be awarded should he qualify at all.

Elections, (1974); Adamany, *Financing Politics,* (1969). See also Hearings on S. 1103, S. 1954, S. 2417 Before the Subcomm. on Privileges and Elections of the Senate Comm. on Rules and Administration, 93d Cong. 1st Sess. (Sept. 1973). Moreover, this data is sufficiently refined and pertinent to allow this Court to make the type of judgments required to determine the extent to which the eligibility and allocation formulae contained in Subtitle H do or do not promote the actual and permissible purposes of the challenged statutes.

Defendants below failed to prove that the matching grant system established by Subtitle H provides any more rational a test of a candidate's seriousness than the filing fees invalidated in *Bullock* and in *Lubin.*[44] In fact, the sole argument defendants below make on this point is that the amount a candidate can raise from private contributions is an objective measure of his support among the electorate. ID Br. 173.

This argument is clearly without merit. Indeed, it was expressly rejected in *Bullock* and in *Lubin.*

In addition, the record in this case affirmatively establishes that there is no rational basis in fact for the primary matching fund provisions of Subtitle H. Matching grants will often *increase* the disparity between the funds available to a candidate supported by the well-to-do and a candidate supported by the less affluent members of the society, even if the latter has a substantially greater number of supporters. *See* discussion *supra* at 10-12.

Such a result is hardly consistent with either the general purposes of public campaign financing, or the more particular purpose of providing assistance to serious candidates without subsidizing or encouraging frivolous candidacies. Indeed, the matching grant approach seems only to compound the inequities campaign subsidies ostensibly are intended to overcome.

It is clear that the primary campaign provisions of Subtitle H fail to satisfy the rational basis in fact requirement, and accordingly should be invalidated.

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[44] Although the "strict scrutiny test" may have provided the basis for decision in both of these cases, they are controlling here to the extent that they hold that a state may not classify a candidate as serious or frivolous solely on the basis of his ability to raise funds, or the ability of his supporters to contribute.

2. *The Presidential Election Campaign Fund Act*

With respect to the general election public financing provisions of Subtitle H, defendants below have argued:

> 1) That Subtitle H ensures "that insubstantial candidates do not receive the same amounts of federal campaign assistance as significant candidates." ID Br. at 155;
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> 2) That each major party "is a vehicle for political expression by a sizable proportion of the population and attempts to appeal to a majority of the electorate." ID Br. at 158-9; and
>
> 3) That recent decisions establish that the government need not "finance the efforts of every nascent political group seeking to organize itself and *unsuccessfully* attempting to win a place on the general election ballot." IDR Br. at 60, citing *American Party of Texas* v. *White,* 412 U.S. 767, 793-94 (1974) (emphasis added).

Except as applicable to *new* political parties, these arguments fail to establish a rational basis in fact for the general election provision of Subtitle H.[45]

Most significantly, defendants below have failed to prove that with respect to the permissible purposes of public campaign financing *minor* party candidates are either "insubstantial," or "less substantial" than ma-

[45] Amicus Metcalf concedes that the case law indicates that Congress is not *constitutionally* required to provide campaign subsidies to candidates of parties that fail to evidence a "substantial modicum of support of the electorate." *Jenness* v. *Fortson,* 403 U.S. 431 (1971). He further believes, however, that Congress is constitutionally required to provide candidates alternative means—e.g. current petition support as well as past electoral support—of demonstrating they do indeed enjoy a specified level of support. See *Lubin* v. *Panish,* 415 U.S. 709 (1974).

jor party candidates. In particular, defendants below failed even to attempt to prove that a *minor* party [which Subtitle H defines as a party whose candidate in the preceding election received between five (5) and twenty-five (25) percent of the total vote, 26 U.S.C. § 9002(f)] does *not* provide a vehicle for political expression by a sizable proportion of the population and does *not* attempt to appeal to a majority of the electorate.

The Court of Appeals expressly stated in upholding the applicability of disclosure laws to minor parties that "no election law should ever be premised on the notion that non-major parties *cannot* win an election." *Buckley* v. *Valeo* Slip Op. at 1546, n. 114. Surely, then, it is impermissible to presume that minor party candidates do not attempt to "appeal to a majority of the electorate." Indeed, the fact that minor parties are treated exactly like major parties with respect to disclosure laws, but are denied equal access to campaign subsidies, further indicates the invidious character and purpose not only of the particular differential funding provisions here at issue, but of the general regulatory scheme of which those provisions form a part.

Moreover, the "modicum of support" test announced in *Jenness* reflects this Court's determination that the candidate of a party which evidences the support of at least five (5) percent of the electorate does provide a vehicle for political expression for a substantial portion of the electorate, does seek to appeal to a majority of the electorate, and therefore *is* a "serious and substantial" candidate. Significantly, this Court consistently has held that while candidates who evidence a modicum of support may be treated *differently* than major party candidates, they may not be treated *unequally. See e.g. American Party of Texas* v. *White,*

supra. (Candidates of parties that evidence sufficient support to qualify for the ballot are entitled to treatment equal to that accorded major party candidates with respect to absentee balloting.) *See* also *Jenness* v. *Fortson, supra*. (Differential treatment with respect to ballot access of parties evidencing a modicum of support was upheld because it was not shown to be tantamount to inherently *unequal* treatment.)

The record and the pertinent decisions of this Court indicate that minor party candidates seek and have the capacity to attract support from a majority of the electorate, and may therefore not be deemed frivolous. *Buckley* v. *Valeo* Slip Op. at 1546, n. 114. Accordingly, neither of the permissible purposes of the legislation here in question is served by denying minor party candidates access to campaign subsidies equal to those accorded major party candidates.[46] There is no rational basis in fact for such treatment, and therefore said provisions should be invalidated.

3. *Presidential Nominating Convention Financing*

Section 9008 of Subtitle H (Chapter 95, 26 U.S.C. § 9008) establishes an account for monies received from the Presidential Election Campaign Fund Act (26 U.S.C. § 6096) for Presidential nominating conventions. Disbursements from this account are authorized to defray lawful expenses up to $2 million for the nominating conventions of major parties. Minor parties are entitled to a proportional amount computed in the same

[46] Amicus Metcalf does not submit that a major and a minor party candidate must be granted exactly the same amount, but rather that each (and, correlatively, the individual supporters of each) is entitled to an *equal opportunity* to secure campaign subsidies. See discussion *supra* at 18-29.

manner as payments are computed for minor party presidential candidates during the post primary-convention period.

Precluded from receiving any monies for Presidential nominating conventions are all parties (new parties) which did not receive five (5) percent of the total vote cast at the last election, independent candidates and all parties which do not have a national convention. 26 U.S.C. § 9008(b)(2). Section 9008(a) specifically requires the Secretary of the Treasury to create "a separate account for the national committee of each *major party*" (emphasis added).

The rationale for establishing public financing for nominating conventions evidently is based on the "influence or potential influence of big money . . . in all phases of presidential elections," since "major political parties have come to rely heavily on large corporations and labor unions to pay for advertisements in convention programs to meet the expenses of nominating conventions." H.R. Rep. 93-1239 at 14. Defendants below cite *American Party of Texas* v. *White*, 414 U.S. 767 (1974) in support of selective funding for such nominating conventions. ID Br. at 170-172.

Amicus Metcalf contends that defendant's below fail to establish a rational basis in the record of this action to support the above findings. In fact, the record below compels the conclusion that public financing of nominating conventions is not rationally related to election law reform.

Findings of fact I ¶ 76, ¶ 77, ¶ 78, and ¶ 79 respectively state:

> Nomination by a national convention of a political party is neither a constitutional nor a legal

requirement for an individual to be a candidate for election as President of the United States. Not all candidates for President of the United States are nominated by a national nominating convention. (¶76)

Some national nominating conventions have far fewer major or controversial issues to resolve than others. (¶77)

Some national conventions are more costly than others. (¶78)

Public funding of national nominating conventions does not relieve individual candidates for federal offices of reliance on private financing. (¶79)

The purpose and effect of the public financing of nominating conventions is to grant an additional subsidy to the political parties which use national nominating conventions (i.e., the two major political parties).

Reliance upon *American Party of Texas* v. *White* is misplaced. That case did not involve convention expenses as such, but rather the cost of holding an election—ballot counting, ballot machines, etc. As stated by plaintiff's reply brief, below, "financing the mechanics of election day activities is obviously far different from financing political conventions (which the Texas statute did not do for any parties), which are often little more than exercises in political publicity, particularly when the renomination of an incumbent President is involved." PR Br. at 67.

B. Laws Less Restrictive Than the Public Financing Provisions Contained in the Challenged Statutes Would Accomplish the Reforms Sought To Be Achieved by the Congress

> *"[E]ven though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgement must be viewed in the light of the less drastic means for achieving the same basic purpose."* [47]

Preventing public financing procedures (and campaign reform plans in general) from infringing upon competing constitutional freedoms and restraints is a most difficult objective to achieve. Any public financing plan must be continually aware of the hazards involved in achieving such an objective while, at the same time, responding to two very important criteria—eligibility determination and subsidy or benefit distribution.[48]

The way in which the government intervenes in the political process is particularly troubling, because it is difficult to keep intervention from becoming inextricably intertwined with certain parties or candidates and thus infringing upon the rights of freedom of speech and association of others.

As demonstrated above, each of the eligibility and allocation formulae in Subtitle H invidiously denies certain voters an equal opportunity to elect the candidate of their choice. In addition, the general election

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[47] *Shelton* v. *Tucker*, 364 U.S. 479, 488 (1960) (footnote omitted).

[48] See for e.g., Redish, *Campaign Spending Laws and the First Amendment*, 46 N.Y.U. L.R. 900 (1971); Fleishman, *supra* n. 24, and Rosenthal, *supra* n. 10.

provisions of Subtitle H substantially inhibit exercise of the First Admendment right to free and effective political association. Accordingly, whether on equal protection[49] or First Amendment grounds, each of the provisions here in question should be subjected to strict judicial scrutiny.[50]

Classifications subject to strict scrutiny generally are invalidated if their defenders fail to prove that the classification represents the least discriminatory method of effectively promoting the permissible purposes of the legislation. *See e.g., Lubin* v. *Panish,* 415 U.S. 709

[49] In numerous cases this Court has indicated that the due process clause of the Fifth Amendment guarantees equal protection of the laws on the federal level, and incorporates the analytical techniques and standards of review developed under the Fourteenth Amendment. *See, e.g., United States Department of Agriculture* v. *Moreno,* 413 U.S. 528 (1973); *Schneider* v. *Rusk,* 377 U.S. 163 (1964); *Bolling* v. *Sharpe,* 347 U.S. 497 (1954). *See also Shapiro* v. *Thompson,* 394 U.S. 618 ((1969).

[50] This Court has suggested that if it is established 1) that the purposes of the statute in question are benign or remedial, and 2) that the statute operates to enhance rather than abridge the enjoyment of personal rights, then a court may apply a rational basis standard of review even though as a general matter strict scrutiny would be appropriate. See *Katzenbach* v. *Morgan,* 384 U.S. 641, 657 (1966). By its own terms, this "remedial purposes exception" is applicable only when strict scrutiny would otherwise be based on a suspect classification theory. It cannot be triggered when strict scrutiny is based on the theory that the denial of equal treatment denies constitutionally protected rights—the rule requires both that the purposes of the legislation be remedial, *and* that the denial of equal treatment enhance rather than abridge the enjoyment of personal rights. As demonstrated *supra,* although the ostensible purpose of public campaign finance legislation is to promote equality of political opportunity, the particular eligibility and allocation formulae here in question will operate with respect to certain persons to abridge rather than enhance the enjoyment of personal rights. Therefore, these formulae do not fall within the remedial purposes exception.

(1974); *Shapiro* v. *Thompson,* 394 U.S. 618, 634 (1969). In addition, proponents of the "sliding scale" approach to equal protection analysis—whereby the strictness of the standards against which a challenged classification is tested varies according to the "facts and circumstances behind the law, the interest which the state claims to be protecting, and the interests of those who are disadvantaged by the classification"—seem inclined where important individual rights or interests are at stake to require the government to establish at the least that there is no method of effectively promoting the permissible purposes of the legislation that would be less discriminatory than the method under review. *See Storer* v. *Brown,* 415 U.S. 724, 756-57 (Brennan, J., dissenting).[51]

As stated by Professor Joel L. Fleishman in a recent article reviewing public financing alternatives, the Courts in assessing First Amendment infringements "would weigh the means chosen against all other reasonably available means in order to be certain that it is the least onerous alternative."[52]

This Court has emphasized that "the First Amendment needs breathing space and that statutes attempting to restrict or burden the exercise of First Amend-

[51] This Court has considered specific statutory alternatives in striking down statutory provisions that infringe upon constitutionally protected rights. *Martin* v. *City of Struthers,* 319 U.S. 141, 147, 148 (1943). *See also O'Brien* v. *Skinner,* 414 U.S. 524, 534 (1974) (Marshall, J., concurring).

[52] Fleishman, n. 10 *supra* at 413. Also see *United States* v. *Robel,* 389 U.S. 258, 267-268 (1967); *Shelton* v. *Tucker,* 364 U.S. 479, 488 (1960), and Note, *The Less Restrictive Alternative in Constitutional Adjudication; An Analysis, a Justification and Some Criteria.* 27 Vand. L.R. 971 (1974).

ment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has given way to other compelling needs of society." *Broadrick* v. *Oklahoma,* 413 U.S. 601, 611-612 (1973).[53]

Amicus Metcalf submits that the challenged public financing statutes do significantly infringe upon certain fundamental First and Fifth Amendment protected freedoms and that defendants below have failed to prove that the eligibility and allocation provisions of Subtitle H represent the least discriminatory method of effectively promoting the permissible objectives of the enactments. Further, Amicus Metcalf contends that the record affirmatively establishes that several alternative approaches would more effectively promote the permissible objectives of the statutes in a *substantially* less discriminatory manner.

The efforts of defendants below to establish that the differential funding provisions of Subtitle H represent the least discriminatory methods of effectively promoting the permissible purposes of the legislation are limited to the fourfold assertion that a voucher approach to public campaign financing is undesirable. They assert such a procedure:

(1) "could" increase the power of groups able to collect vouchers quickly and efficiently;

(2) "could" lead such groups to use coercion to aggregate their voucher strength;

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[53] See *Roe* v. *Wade,* 410 U.S. 113 (1973); *Dunn* v. *Blumstein,* 405 U.S. 330 (1972); *Shapiro* v. *Thompson,* 394 U.S. 618 (1969) and *Talley* v. *California,* 362 U.S. 60 (1960). See also *Dreas* v. *Myers,* 535 P.2d 541 (Ore. Sup. Ct. 1975) where the State of Oregon's campaign financing laws was found to be unconstitutional based on the less restrictive alternative test.

(3) "might" lead to the development of a black market in vouchers; and

(4) provides no assurance that a candidate will receive voucher funds in time to conduct a meaningful campaign. ID R at 60-65.

These arguments are without merit. The first three are not only highly speculative, but could easily be averted by provisions in voucher legislation for harsh criminal penalties for such conduct. With regard to the fourth assertion it suffices to say that a candidate's decision to seek vouchers late rather than early in the campaign would be to a significant extent a function of a candidate's strategy—which presumably is a matter over which the candidate enjoys some control. In any case, surely a voucher plan gives a candidate *more* control over when campaign subsidies are allocated than the post-election grant provision of Subtitle H.

Defendants below clearly have failed to prove that Subtitle H represents the least discriminatory method of effectuating the permissible purposes of the legislation. For this reason alone the provisions here at issue should be invalidated. See *Storer* v. *Brown,* 415 U.S. 724, 760-61 (Brennan J., dissenting) (1974).

It is not difficult to demonstrate that Congress can select from among several procedures for allocating campaign subsidies which would promote the permissible purposes of the legislation *more* effectively than Subtitle H, and in a *significantly* less discriminatory manner.

One less onerous alternative that would accomplish campaign financing reform objectives without infring-

ing upon protected Constitutional rights is a voucher plan introduced by Amicus Metcalf in the Congress,[54] which was noted by the majority and in the dissenting opinions of the courts below. *Buckley* v. *Valeo*. Slip Op. at 1505 and 1561. Under this plan all taxpayers who checked the appropriate box on their income tax forms would receive political campaign contribution vouchers. A box designated for "congressional elections" would appear on the tax forms every year; a separate "Presidential election" check-off box would appear only in the two years preceding presidential election years.

Prior to each non-presidential election year, each taxpayer would have been sent two vouchers designated for use in congressional races, one of which would have been received in time for use in the primaries if the taxpayer so desired. Otherwise, he or she would be permitted to use both vouchers in the general election.

Prior to each Presidential election year, in addition to the congressional vouchers, the taxpayer would have been sent two vouchers designated for use in the presidential race. Again, one of these would have been received in time for use in the primaries but would remain available for use in the general election if the taxpayer so desired.

To avoid abuses, however, these vouchers could not be carried over from election to election; they would become invalid after the date of the general election every two years. Further, criminal penalties are provided for any person who sells, offers to sell, or purchase vouchers.

[54] S. 1760, 94th Congress, 1st Sess., Cong. Rec. (daily ed) S-8445-8448.

Each voucher would be redeemable for one dollar when presented to the Department of the Treasury, pursuant to regulations issued by the Federal Election Commission. Qualified candidates, political committees, and parties would be eligible to receive vouchers. The vouchers would have no value for anyone else, or for any taxpayer who neglected or decided not to use them. The Congress would appropriate sufficient funds to cover the number of vouchers requested annually, and the amount not redeemed by the end of each biennial campaign would revert to the Treasury.

Such a public financing system would not necessitate an artifical or discriminatory funding formula. Greater individual participation and interest in election campaigns would be fostered. Vouchers would be available to and could be redeemed by any candidate who has a "modicum of support." Therefore, public financing would be provided "serious" candidates, based on their current level of support. But the voucher system would not operate either to encourage frivolous candidacies by those with little support or to provide continuing support for candidacies by those who, while enjoying substantial support in a prior election, no longer command significant support.

Further, placing the ultimate decision with the public as to the share of public funds each party or candidate would receive would eliminate the danger of partisan political manipulation of such public funds. Finally, since each individual would be accorded control over the same value of vouchers, which he would make available to the candidate or party of his choice, such a system would not discriminate against an indi-

vidual's right to an equal opportunity to participate to the political process, nor abridge in any manner the right of a citizen to free and effective political association.

Another less restrictive alternative with elements of the voucher system has recently been recommended by David Adamany and George Agree. Based on an extensive analysis of campaign financing conducted for the 20th Century Fund,[55] the Adamany-Agree proposal would establish a mixed voucher-flat grant program. Their proposed procedure is similar in some respects to Amicus Metcalf's voucher plan discussed *supra,* and would provide for public financing of both Presidential and Congressional candidates as well as a system of direct grants to political parties.

A third type of less restrictive alternative contains a petition option procedure under which a candidate would be able to obtain public financing by either qualifying on the basis of a past election percentage factor, or submitting petitions bearing a specified percentage of eligible voters.[56]

These and other less restrictive alternatives to the challenged statutes have been widely discussed, and have received substantial support among public officials and constitutional scholars.[57]

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[55] Adamany and Agree. *Political Money: The Strategy for Campaign Financing in America* (1975) Chapter 11.

[56] See S. 1954, 93rd Cong. 1st Sess., introduced by Senators Stevenson of Illinois and Mathias of Maryland.

[57] See Adamany and Agree, *supra,* n. 55 at Chapter 10. Also see 61 Am. Bar Assoc. J. 1085 (August, 1975) Report of the American Bar Association Special Committee on Election Reform, adopted August, 1975 by the House of Delegates of the American Bar Association.

Undoubtedly the area of campaign reform presents difficult problems, but these are not so complex[58] that they foreclose the above mentioned alternatives. Indeed, some of the alternatives noted herein would be a far more practical way—in the sense of efficiency and convenience—of achieving electoral reform than the challenged statutes. Certainly the voucher procedure would eliminate the practical problems confronting a Secretary of the Treasury in administering and distributing public financing, problems which will be compounded if public receptivity to the tax check off system as presently structured remains relatively low.

This Court in the past has recognized that valid alternatives to accomplish a permissible objective should be considered in scrutinizing a constitutionally flawed statute. Indeed, "if a solution exists that is equally solicitous of the state's interest . . . but is more solicitous of individual interests, a court certainly should not be precluded from protecting the individual."[59]

Clearly less restrictive alternatives exist for public financing of elections. The less restrictive means test should be invoked in this case to preserve equality of opportunity to participate in the political process—surely one of the most fundamental rights of the citizen[60]—and, accordingly, the public financing provisions of the challenged statutes should be found to be constitutionally defective.

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[58] Id. c.f. *San Antonio Indep. Sch. Dist.* v. *Rodriguz,* 411 U.S. 1, 41 (1973).

[59] 27 Vand. L.R. 971 (1974) *supra* n. 52 at 1022.

[60] In fact, such a right is a combination of many protections under the First, Fifth, and Fourteenth Amendments and, taken together, are the essential guarantors of political freedom in our representative system of government.

CONCLUSION

Amicus Metcalf respectfully submits for the reasons herein stated that the public financing provisions of the FECA, FECA Amendments and Subtitle H should be found to be violative of the Constitution and that the decisions of the Courts below upholding said statutes should be reversed.

Respectfully submitted,

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In The

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Appellants,

—v.—

Francis R. Valeo, Secretary
of the United States Senate, et al.,

Appellees.

BRIEF OF LOS ANGELES COUNTY CENTRAL COMMITTEE OF THE PEACE AND FREEDOM PARTY, AMICUS CURIAE

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BRIEF OF LOS ANGELES COUNTY CENTRAL COMMITTEE OF THE PEACE AND FREEDOM PARTY, AMICUS CURIAE

INTEREST OF THE AMICUS CURIAE[1]

The California Peace and Freedom Party is one of four political parties qualified for ballot status in California.

The Los Angeles County Central Committee of the Peace and Freedom Party is the body officially

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[1] Letters of consent to the filing of this brief have been filed with the Clerk of the Court.

authorized to conduct the party's campaign in Los Angeles County under California Election Code Section 8940. As of September 12, 1975, 5,883 voters were registered as affiliated with the Peace and Freedom Party in that county, an increase from 4,071 in January 1975.

Both the Los Angeles County Central Committee and the State Central Committee of the California Peace and Freedom Party are affiliated nationally with the People's Party, whose 1972 presidential candidate, Dr. Benjamin Spock, appeared on the ballots of 10 states, including California, and was one of the four presidential candidates assigned Secret Service protection during the general election campaign. The People's Party expects to increase the number of states in which it is on the ballot in 1976 and the California Peace and Freedom Party will hold a presidential primary election on June 8, 1976.

The Peace and Freedom Party has a disproportionately high number of poor members and in 1974, 34 of its 44 candidates for partisan state and federal office filed under Court order after the Federal District Court in the Northern District of California certified their inability to pay the candidate filing fees required at that time. Being classified as a "new party" by the Federal Election Campaign Acts of 1971 and 1974, its nominee for president would be denied advance public funding in the general election, regardless of her or his potential support at that time.

In early 1973, the Los Angeles County Peace and Freedom Party Central Comittee sent a mailing to all of its members, urging them to utilize the $1.00 check-off established by 26 U.S.C. 6096, designating their $1.00 for the sole use of the nominee of the "California Peace and Freedom Party." All such dollars designated by its members solely for the use

of the Peace and Freedom Party nominee were subsequently appropriated by the Congress by P.L. 93-53 for the use of other parties.

The Peace and Freedom Party has been in the forefront of efforts to open up the political process to more effective participation by the poor and by dissenting political minorities. Its efforts in this area include numerous lawsuits in both the state and federal court systems, including Lubin v. Panish, 415 U.S. 709 (1974), sponsored by the Southern California ACLU Foundation at the request of the Peace and Freedom Party. Donald Paul Lubin was a member of the Los Angeles County Central Committee of the Peace and Freedom Party.

SUMMARY OF ARGUMENT

This brief focuses on the First and Fifth Amendment challenges to the federal system for public financing of presidential elections contained in certified questions 5 and 6 before the Court of Appeals. The judgment of the Court of Appeals on these two questions should be reversed.

Extensive attention is devoted to the constitutional infirmities of the matching system for funding primary elections. This system confers a discriminatory advantage on candidates with wealthier supporters, thereby discriminating against other candidates and their supporters in violation of the First Amendment and the Due Process Clause of the Fifth Amendment. It is noted that the state asserts no compelling interest that candidates with wealthier supporters be given more public funds than candidates with poor supporters. Furthermore, indigent voters are absolutely excluded from effective participation in this integral new portion of the electoral process solely because of their inability to make a monetary contribution.

The eligibility criteria chosen for public funding in both the primary and general elections are remarkably ill-fitted to the asserted state interest of limiting public funding to "serious" candidates. The primary election criteria is based on wealth, a "traditionally disfavored" and "suspect" classification, and violates the "constitutionally protected right to participate in elections on an equal basis with other citizens." The general election funding criteria fails to accommodate the fluidity of American politics, excluding serious new party candidates from any advance public funding, regardless of their strength, thereby infringing on the associational rights of their supporters. Under the Federal Election Campaign Act criteria, Theodore Roosevelt, identified by the Court of Appeals opinion as an early advocate of public campaign financing, would have been denied advance public funding in his 1912 general election campaign as a new party candidate, despite the fact he ran second in both the popular and electoral vote.

Both the primary and general election public funding systems infringe on basic constitutional rights and must be subject to "close judicial scrutiny" and the "less drastic means" test. Since other "obvious and well-known means of testing the 'seriousness' of a candidacy" are available--such as a petition requirement--these more "drastic means" fail to meet constitutional standards.

The Court is further reminded that there is a vital public interest--a state interest--in maintaining a diversity of political views within the electoral system and that "right conclusions are more likely to be gathered out of a multitude of tongues than through any kind of authorative selection."

The $1.00 check-offs designated for specified party nominees in early 1973 were misappropriated for the use of other candidates by P.L. 93-53.

ARGUMENT

I.

THE FEDERAL ELECTION CAMPAIGN ACT OF 1974, BY PROVIDING PRIMARY ELECTION PUBLIC FUNDING BASED SOLELY UPON THE MATCHING OF PRIVATE CONTRIBUTIONS, DISCRIMINATES AGAINST CANDIDATES SUPPORTED BY POOR VOTERS AND AGAINST THE VOTERS SUPPORTING SUCH CANDIDATES, IN VIOLATION OF THE FIRST AMENDMENT AND THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT.

A. The Matching System Confers an Advantage on Candidates With Wealthier Supporters in Violation of the Due Process Clause of the Fifth Amendment.

Chapter 96 of Subtitle H of the Internal Revenue Code of 1954 is known as the Presidential Primary Matching Payment Account Act, hereinafter cited as the Primary Matching Payment Act. 26 U.S.C. 9031-9042. For every qualified dollar raised in private contributions, the Account will give the candidate one dollar in public funds. The Act provides matching funds only for the first $250 contributed to a candidate by every individual donor. 26 U.S.C. 9034(a). However, to be eligible for any matching payments, a candidate must raise at least $100,000 in such qualified matchable contributions, with at least $5,000 required to be raised in each of at least 20 states.

This system cannot be sustained just because it is "workable," as asserted by the Court of Appeals in the opinion below at page 1566 (West's advance sheets). The question is whether or not the system is constitutional.

Any public campaign financing system basing public payments on the matching of private contributions confers a distinct advantage on the candidate with wealthier supporters. The candidate whose supporters can contribute $250 each will receive 250 times as many public dollars as the candidate with the same number of supporters who are financially able to contribute an average of only $1.00 each. With their public funds, then, the candidate with the wealthier supporters can purchase 250 times as many radio advertisements, television spots, handbills, posters, billboards, newspaper advertisements or mass mailings as the candidate with the poorer supporters. The advantage conferred on the candidate with the wealthier supporters is neither small nor subtle, it is immense and blatant.

The State asserts no compelling interest that candidates with wealthy supporters be given more public funds than candidates with poor supporters. The State does assert an interest in limiting payments to "serious" candidates. But, as a matter of law, one can no more say that a candidate lacks "seriousness" solely because that candidate's supporters are of limited financial means than one can say that a candidate lacks "seriousness" solely because she or he is personally unable to pay a monetary filing fee. Lubin v. Panish, 415 U.S. 709, 716-717 (1974), Bullock v. Carter, 405 U.S. 134, 145-146 (1972), Georgia Socialist Workers Party v. Fortson, 315 F.Supp. 1035, 1041 (N.D. Ga. 1970), affirmed on other grounds as Jenness v. Fortson, 403 U.S. 431 (1971). Classifications based on wealth are inherently "suspect" and "traditionally disfavored," McDonald v. Board of

Election Commissioners, 394 U.S. 802, 807 (1969), Harper v. Virginia Board of Elections, 383 U.S. 663, 668 (1966), Douglas v. California, 372 U.S. 353 (1963).

The granting, by state action, of such an immense advantage to candidates with wealthier supporters invidiously discriminates against candidates with poor supporters in violation of the Due Process Clause of the Fifth Amendment. As stated by this Court in Johnson v. Robison, 415 U.S. 361 (1974) at pages 364-365, note 4:

> "Although 'the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is "so unjustifiable as to be violative of due process."' Schneider v. Rusk, 377 U.S. 163, 168 (1964); see Frontiero v. Richardson, 411 U.S. 677, 680 n.5 (1973); Shapiro v. Thompson, 394 U.S. 618, 641-641 (1969); Bolling v. Sharpe, 347 U.S. 497 (1954). Thus, if a classification would be invalid under the Equal Protection Clause of the Fourteenth Amendment, it is also inconsistent with the due process requirement of the Fifth Amendment. See Richardson v. Belcher, 404 U.S. 78, 81 (1971)." (1974).

Furthermore, since the matching system imposes "a very 'real and appreciable impact' on the equality, fairness and integrity of the electoral process," it must be subject to strict judicial scrutiny. Gould v. Grubb, 14 C.3d 661, 670 (July 7, 1975). Also, see Bullock v. Carter, supra, p. 134. Under such a standard of judgment, the matching system must surely fail.

B. The Conferring of a Discriminatory Advantage on Candidates With Wealthier Supporters Discriminates Against Voters Supporting Other Candidates, Effectively Diluting the Weight of Their Votes in Violation of the Due Process Clause of the Fifth Amendment and Abridging Their Right of Association Guaranteed by the First Amendment.

The rights of candidates and voters are closely intermingled. As this Court stated in Lubin v. Panish, supra, 415 U.S. 709 (1974), at page 716:

> "... voters can assert their preferences only through candidates or parties or both, and it is this broad interest that must be weighed in the balance."

The matching system, by placing candidates with poor supporters in a disadvantaged position, abridges those candidates' supporters' rights to associate effectively for the advancement of their own political beliefs. See Bullock v. Carter, 405 U.S. 134, 143 (1972), and Williams v. Rhodes, 393 U.S. 23, 31 (1968).

Furthermore, this Court has continually widened the scope of the voter's right to equal protection in the electoral process over the past fifteen years. At first, this was expressed in the requirement that each voter have an equal vote. Baker v. Carr, 369 U.S. 186 (1962), Grey v. Sanders, 372 U.S. 368 (1963), Wesberry v. Sanders, 376 U.S. 1 (1964). Then, the Court broadened its language in Reynolds v. Sims, 377 U.S. 533 to declare at page 565 that:

> "... Full and effective participation by all citizens in ... government requires ... that each citizen have an equally effective voice in the election. ..." (Emphasis added.)

Finally, in Dunn v. Blumstein, 405 U.S. 330 (1972) this Court stated its position at page 336:

> "... In decision after decision, this Court has made it clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction."

Under the Primary Matching Payment Act, a poor citizen obviously has a much less effective voice than a wealthy citizen in assisting the candidate the poor citizen supports to qualify for public funding and to receive the full amount of such funding. The poor citizen may still participate in the election, but she or he certainly does not do so on an "equal basis" with the wealthy citizen under the matching system.

The California Supreme Court carried the United States Supreme Court's various decisions to their logical conclusion in its unanimous decision in Gould v. Grubb, 14 C.3d 661 (July 7, 1975), holding at page 670:

> "... a statute, ordinance or election practice which reserves such an advantage for a particular class of candidates inevitably dilutes the weight of the vote of all those electors who cast their ballots for a candidate who is not included within the favored class."

The Primary Matching Payments Act "reserves such

an advantage" for the class of candidates supported by wealthy contributors, thereby inevitably diluting the weight of the vote of all those electors who cast their ballots for other candidates. Such a dilution violates the equal protection guarantees inherent in the Due Process Clause of the Fifth Amendment. The constitutional guarantee of equal protection, as stated unequivocally in Harper v. Virginia Board of Elections, supra, 383 U.S. 663 (1966), at page 668, is:

> "... the principle that denies the State the right to dilute a citizen's vote on account of his economic status ... ."

C. The Primary Matching Payment Act is Exclusionary as to Indigent Voters.

The Primary Matching Payment Act bases the amount of public payments to a candidate, as well as a candidate's eligibility to receive any public payments at all, on the receipt of monetary contributions. Volunteer services are not counted, nor is there any alternative eligibility criteria such as the submission of petition signatures. Hence, the Primary Matching Payment Act is absolutely exclusionary as to indigent voters who are unable to make a monetary contribution. This denies these citizens their "constitutionally protected right to participate in elections on an equal basis with other citizens." Dunn v. Blumstein, supra, 405 U.S. 330, 366 (1972).

The number of poor and indigent persons is not insignificant. The Los Angeles Times on August 31, 1975, on page 11, reported that the number of Americans enrolled in the government's food stamp program declined slightly to 19.1 million in July, according to the Department of Agriculture. Robert Samuelson, writing on page 5 of the Los

Angeles Times Opinion Section on August 31, 1975, noted that one of the principal eligibility criteria for receiving food stamps is that the applying family have less than $1,500 in assets--$3,000 for the elderly over 65--with some necessities exempted from being included in the total. Senator George McGovern's article on the same page, states that 77% of food stamp recipients have incomes after taxes below $5,000 per year. Real wages continue to decline as inflation consumes paychecks and pensions. The September 6, 1975 Los Angeles Times, on page 1, reported that the number of jobless in California in August 1975 stood at 898,400, 10.2% of the total labor force on a seasonally adjusted basis, according to the State Employment Director. In May 1975, California's unemployment rate peaked at 10.6%, the highest figure since the state began keeping jobless records 25 years earlier. Nationally, the employment situation has followed a similar pattern.

The poor, the indigent, and the unemployed can be found in all mass political parties, whether Democratic, Republican, American Independent, Peace and Freedom, Libertarian or independent. They may not be easy to see. Many are disheartened and have ceased to participate. As noted by the New York Times editorial of December 4, 1972:

> "There is a direct correlation between income and political participation. The poor do not vote in large numbers. ... They cannot believe that if they vote, it will make any difference in their lives or in the nation's course."

Previouly, governmental bodies had sought to encourage the poor to participate, emphasizing that the state, in every official respect, would weight their participation equally with that of the wealthiest citizen in all phases of the electoral process. Now,

with the matching system, the poor see Congress reversing this direction and moving officially to demean their participation in the political process because of their poverty.

This Court has been vigilent in defending the constitutional rights of poor citizens to participate fully in the political process. It has moved relentlessly over the past decades to strike down state-imposed wealth-related barriers to equal citizen participation in the electoral process. Harper v. Virginia Board of Elections, supra, 383 U.S. 663 (1966), Bullock v. Carter, supra, 405 U.S. 134 (1972), and Lubin v. Panish, supra, 415 U.S. 709 (1974). This Court must not fail to strike down new state-imposed wealth-related barrier to equal participation and, in doing so, it should reaffirm its previous positions enunciated in Harper v. Virginia Board of Elections, supra, 383 U.S. at 666, that:

> "... a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard. ..."

and again at 383 U.S. 668 that:

> "... Wealth, like race, creed, color, is not germane to one's ability to participate intelligently in the political process. ..."

D. Denial of Equally Effective Participation in the Primary Election Constitutes Denial of Equally Effective Participation in the Entire Electoral Process.

As noted by the staff of the Harvard Law

Review in that journal's comprehensive article "Developments in the Law--Elections," 88 HLR 1111 (April 1975), at Page 1151:

> "The selection of nominees by political parties plays a crucial role in the electoral system. Indeed the nomination of candidates by the major parties has been called the 'most critical stage' of the electoral process. Although independent and minor party candidates play an important role in the political process, they rarely win elections; thus '[a]s a practical matter, the ultimate choice of the voters is predetermined when the [major party] nominations have been made.' Especially in the case of major party nominating procedures, therefore, the ability of individuals to participate fully in party processes is of paramount importance if they are to have a meaningful voice in the selection of their elected officials."

Denial to the poor of effective participation in the primary election cannot be remedied by giving them an equal voice again in the general election after nominations have already been made. Terry v. Adams, 345 U.S. 461 (1953); Smith v. Allwright, 321 U. S. 649 (1944); Nixon v. Condon, 286 U.S. 73 (1932); Nixon v. Herndon, 273 U.S. 536 (1927).

The Court of Appeals in its opinion below in the instant case, upheld both the matching system and the entire public funding provisions of Subtitle H of the Internal Revenue Code as furthering the State's interest in "reducing the reliance of Presidential candidates on large contributors, thus reducing their influence on the outcome of elections and on

the operation of government." West's advance sheets, pp. 1507, 1561. But the basing of public funding in the primary election on a matching system is certainly destructive of such a stated goal. In the words of one legal scholar, Joel L. Fleischman, in his article on "Public Financing of Election Campaigns: Constitutional Constraints on Steps Toward Equality of Political Influence of Citizens," 52 N.C.L. Rev. 349, (Dec. 1973), at page 390:

> "... establishing eligibility by requiring prospective primary candidates to raise from private sources a fixed amount of money as evidence of voter support leaves wealthier citizens in the position of determining who will and will not receive public campaign funds. If the ceilings of individual contributions were sufficiently low--ten to twenty dollars--it is conceivable that such a mechanism might be held constitutional. Higher contribution ceilings, however, would permit the wealthy to control the field of primary candidates and then to enjoy a free ride at the expense of the taxpayers for the major portion of the campaign costs themselves.
>
> "Requiring a money payment alone, therefore, would be unconstitutional. ..."

E. Less Intrusive Means Are Clearly Available to Measure the "Seriousness" of a Candidate to Establish Eligibility for and the Level of Public Funding.

The Primary Matching Payment Act attempts to sort out "serious" from frivolous candidates by

eligibility criteria expressly solely in terms of dollars contributed in each state. As with attempts to sort out spurious candidates from "serious" ones with filing fees, however, such a wealth-related criteria is "extraordinarily ill-fitted to that goal" and infringes on constitutionally protected rights. Bullock v. Carter, supra, 405 U.S. 134, 146 (1972), Lubin v. Panish, supra, 415 U.S. 709, 717 (1974). Other means less injurious of these constitutionally protected rights are clearly available to accomplish such a goal. As this Court noted in Lubin v. Panish, supra, at page 718: "there are obvious and well-known means of testing the 'seriousness' of a candidacy," such as a petition requirement. The selection of the more drastic over the less drastic means is in clear violation of this Court's holding in Dunn v. Blumstein, supra, 405 U.S. 330 (1972), at page 343, that compelling state interests may not be pursued by:

> "... means that unnecessarily burden or restrict constitutionally protected activity. Statutes affecting constitutional rights must be drawn with 'precision,' NAACP v. Button, 371 U.S. 415, 438 (1963); United States v. Robel, 389 U.S. 258, 265 (1967), and must be 'tailored' to serve their legitimate objectives. Shapiro v. Thompson, supra, at 631. And if there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose 'less drastic means.' Shelton v. Tucker, 364 U.S. 479, 488 (1960)."

Furthermore, the matching system established by the Primary Matching Payment Act cannot be sustained, as asserted by the Court of Appeals in

the opinion below, at pa[illegible] 1566 (West's advance sheets) merely because Congress has also utilized a matching system in various programs of economic aid to states and localities for anti-pollution or highway programs. As stated by the Ninth Circuit Court of Appeals in United States v. Thoresen, 428 F.2d 654 (C.A. Cal. 1970) (citations omitted):

> "When legislative classifications threaten basic civil rights, the Equal Protection Clause requires 'some overriding statutory purpose,' and the lines drawn in such statutes are subject to 'the most rigid scrutiny.' ...
>
> "On the other hand, '[i]n applying the Equal Protection Clause to social and economic legislation, we give great latitude to the legislature in making classifications.' ..."

Clearly, then, the Primary Matching Payment Act can no more be held constitutional because of the highway program analogy than the poll tax could be sustained by the asserted analogy with driver's license fees in Harper v. Virginia Board of Elections, supra, 383 U.S. 663, 668 (1966).

II.

THE FEDERAL ELECTION CAMPAIGN ACTS OF 1971 AND 1974 INVIDIOUSLY DISCRIMINATE AGAINST NEW PARTY AND MINOR PARTY NOMINEES AND THEIR SUPPORTERS IN VIOLATION OF THE FIRST AMENDMENT AND THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT.

We concur most strongly in the dissenting

opinion in the Court of Appeals on this point by Circuit Judge Tamm joined in by Circuit Judge Wilkey. West's advance sheets at pages 1604-1607. Since Judge Tamm's dissent makes the basic legal points quite clearly, we shall add but a few supplementary considerations.

A. The Criteria for Advance Public Funding in the General Election, Based Solely on Four-Year-Old Data, Provides a Test Remarkably Ill-Fitted to the Claimed State Interest.

If the authority relied upon by the Court of Appeals in the opinion below at page 1513 (West's advance sheets) is accepted, Presidential candidates must spend at least 70% of their time in fund raising rather than in campaigning. For the government to relieve certain candidates of this burden by public funding is to provide them with an immense and obvious advantage over other candidates not so funded. The arguments in I.(A) and (B), above, with respect to the constitutional problems raised by discriminatory funding of certain candidates apply equally here and are incorporated by reference.

Under the Federal Election Campaign Act ("FECA"), eligibility for advance public funding and the level of such funding is solely dependent upon the percentage of the vote received by the party's presidential nominee four years earlier. There is no alternative method by which a new party nominee may prove her or his "seriousness." despite the fact that this Court has recognized that other "obvious and well-known means of testing the 'seriousness' of a candidacy," such as a petition requirement, could be employed. Lubin v. Panish, supra, 415 U.S. 709, 718 (1974). The possibility of post-election reimbursement for a new party nominee does not save the

system. The new party nominee will still have had to divert 70% of her or his energies away from campaigning to fund raising.

Judge Tamm's dissent cites how poorly the eligibility formula would have applied to the elections of 1968 and 1972. Even more impressive are the examples of 1912 and 1916. Given below are the presidential election results for the major candidates in these elections, as well as the results for 1908, which would have established the advance funding levels for 1912. The data is from Svend Petersen, A Statistical History of the American Presidential Elections (N.Y., Ungar Publishing Co., 1963):

Party and Year	Electoral Vote	Popular Vote	Percentage of Vote
Republican			
1908	321	7,679,114	51.57%
1912	8	3,485,831	23.15%
1916	254	8,548,935	46.12%
Democratic			
1908	162	6,410,665	43.05%
1912	435	6,301,254	41.85%
1916	277	9,131,511	49.26%
Progressive			
1908	(Party did not exist in 1908)		
1912	88	4,127,788	27.42%
1916	0	35,034	0.19%
Socialist			
1908	0	420,858	2.83%
1912	0	901,255	5.99%
1916	0	585,974	3.16%

Some points should be noted from this table. Theodore Roosevelt, quoted from at length in the opinion below at pages 1511-1512 as an early advocate of public campaign financing, ran as the candidate of the newly-formed Progressive Party in 1912. Roosevelt, even though he ran second in both the popular and electoral vote that year, would have been ineligible to receive any advance public funding, under the FECA criteria. Was Roosevelt not a serious candidate? Or are the criteria for advance funding drawn in such a way as to exclude some serious candidates? Obviously, the latter is the case. Furthermore, the tendency of FECA criteria to perpetuate existing established parties can easily be deduced. The Progressive Party largely disintegrated as an effective national organization prior to the 1916 elections, having a candidate on the ballot in only three or four states and receiving barely 35,000 votes (0.19% of the total). But, under the FECA, with the prospect of millions of dollars in advance funds coming for the party's 1916 nominee, to be funded as a major party candidate, the party would have been invigorated and many would have sought its nomination. Many people might even have deserted the Republican Party, whose nominee would have been funded in advance only as a minor party candidate under FECA in 1916, to join a party destined to receive greater funding. Such a senario is not just speculation, it is the deliberate intent of the act as expressed in Senate Report 93-689, issued February 21, 1974, to accompany the FECA bill for that year. Reprinted in United States Code, Congressional and Administrative News, 93rd Congress--2nd Session, 1974 Volume 3, Legislative History, this document states, at page 5544:

> "All but fringe candidates would have an incentive to seek a major party nomination, rather than run as a minor party candidate, so as to be eligible for

> the full level of public assistance in the general election. ..."

If the FECA system had been in effect in the 1840's, we would probably still have the Whig Party around today. There can be no doubt that the FECA will act, and is designed to act, to perpetually establish the presently prevailing political parties. In this respect, then, the FECA is similar to the Ohio Election Code provisions struck down by this Court in Williams v. Rhodes, supra, 393 U.S. 23 (1968).

B. There is a State Interest in Maintaining a Diverse Range of Choice in the Electoral Arena.

As this Court stated in Lubin v. Panish, supra, 415 U.S. 709 (1974), at page 716:

> "... It is to be expected that a voter hopes to find on the ballot a candidate who comes near to reflecting his policy preferences on contemporary issues. ..."

A diversity and multiplicity of views contending in the political arena is vital to the health of a free society. As stated by the eminent Circuit Judge Learned Hand in a freedom of the press context in United States v. Associated Press, 52 F.Supp. 362 (S.D. N.Y., 1943), at page 372, the dissemination of news and views from many different sources, is:

> "... one of the most vital of all general interests ... [It] is closely akin to, if indeed it is not the same as, the interest protected by the First Amendment; it presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through

> any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all."

Elections are not just the means by which we select our public officers, they are a vital forum for the discussion of public policy. Third parties and independent candidacies play an "important part" in this process as recognized in the comprehensive Harvard Law Review article, supra, "Developments in the Law--Elections," 88 HLR 1111, at page 1123:

> "... Frequently they raise issues and develop policies long before established parties are prepared to act, and their presence on the general election ballot and participation in election campaigns permits voters to demonstrate support for new or unorthodox ideas. Major party nominees may respond to popular support for other candidates by reformulating their policies and programs. Thus, despite a general lack of electoral success, minor parties and independent candidates may eventually see substantial portions of their programs implemented.
>
> "Minor parties and independent candidacies may also serve a legitimizing function, by providing disaffected voters with an outlet for their frustration with the established parties. Without this alternative, dissatisfied voters who find themselves repeatedly confronted with unattractive policies and candidates may come to doubt the legitimacy of the entire electoral process. It is therefore plain that the importance of independent and minor

> party candidates transcends their ability to capture electoral office." (Footnotes omitted.)

Thus, there is a state interest in maintaining an open electoral process so that the society can grow and consider new ideas. Legislators concerned about re-election may be slow to see it, but it is there nonetheless.

Considering how often the claimed state interests in regulating access to the electoral process are stated, and, as noted in the Harvard Law Review article cited above at page 1137, perhaps sometimes overstated, it would be a positive step for this Court to reassert the state interest in maintaining a diverse range of choice in the electoral arena. This case, involving legislation highly discriminatory to independent candidates and minor parties, might provide a good vehicle for just such a statement.

III.

THE PIRACY OF THE RESTRICTED ACCOUNT FUNDS BY SECTION 6(d) OF P.L. 93-53 CASTS A DOUBT ON THE "VOLUNTARYNESS" OF MILLIONS OF DOLLARS PRESENTLY IN THE PRESIDENTIAL ELECTION CAMPAIGN FUND.

In the first year of its operation under the FECA of 1971, the presidential $1.00 check-off on the federal income tax return established by 26 U.S.C. 6096 and 9006 permitted a taxpayer to designate her or his $1.00 to go to a general fund for the use of all party candidates or to a "separate account" for the sole use of the presidential nominee of whatever party the taxpayer designated. If any money in a separate account remained unused by the

party nominee after the election, it would revert to the "general fund of the Treasury," as 26 U.S.C. 9006(b) then required, but under no circumstances could it be used to benefit the candidates of any other party.

With this understanding, millions of American taxpayers checked off their dollars for designated "separate accounts." in early 1973.

By a rider to the Public Debt Limitation Bill of 1973, P.L. 93-53, however, the "separate accounts" were abolished and the moneys therein transferred to the general fund for the use of all party nominees. Section 6(d) of the bill stated that:

> "... Any designation made [heretofore] ... for the account of candidates of any specified political party shall ... be treated solely as a designation to the Presidential Election Campaign Fund."

Consent was not asked of the individual taxpayers to this change. Furthermore, if a taxpayer objected to the change and wanted to withdraw her or his check-off, the taxpayer found that it was not possible to do so.

The Court of Appeals, in the opinion below at pages 1507 and 1562, stated that:

> "... If the taxpayer wants to avoid any conception that some part of 'his' tax money will benefit candidates he does not favor, then he can simply refrain from checking off his dollar for the Fund."

This statement leaves an erroneous impression that all the money presently in the fund has been voluntarily collected.

Basically, the check-off device is nothing but window dressing, "a bookkeeping manipulation with no practical impact," in the words of the Harvard Law Review, supra, 88 HLR 1111, 1266, note 176, designed to give people the semblance of participation and control without the substance.

CONCLUSION

The judgment of the Court of Appeals on certified questions 5 and 6 should be reversed.

Respectfully submitted,

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IN THE SUPREME COURT OF THE UNITED STATES

JAMES L. BUCKLEY, *et al*,
Plaintiffs,

JAMES CALAWAY,
Intervening Plaintiff,

-vs-

FRANCIS R. VALEO, *et al*,
Defendants,

CENTER FOR PUBLIC FINANCING OF ELECTIONS, *et al*,
Intervening Defendants.

Civil Action
No. 75-1061

BRIEF OF THE COMMITTEE FOR DEMOCRATIC ELECTION LAWS, AMICUS CURIAE

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INTEREST OF AMICUS CURIAE

The Committee for Democratic Election Laws (CoDEL) represents a broad cross section of citizens concerned with election laws which impede the democratic process. CoDEL's activities include providing a legal presentation in cases challenging such election laws; providing a voice for its constituents before legislatures concerning laws dealing with the electoral process and in providing information regarding a variety of issues touching on the electoral process, such as efforts to obtain bilingual ballots and to facilitate voter registration.

CoDEL believes that provisions of the Federal Election Campaign Act of 1971 and the Amendments of 1974 burden the First, Fourth, Fifth, and Ninth Amendment rights of the Plaintiffs in this action, of candidates and supporters of small parties and of independent candidates. In addition, the effect of the Act is to institutionalize the two major parties and block access to the electoral process on the part of third parties and independent candidates.

SUMMARY OF ARGUMENT

I.

The Federal Election Campaign Act, hereinafter referred to as the Act or FECA, presents two fundamentally different and separable approaches to the problem of controlling election campaign abuses.

The first approach is a series of regulations controlling the financing of federal election campaigns. This approach consists of limits on contributions to a campaign and on expenditures of a campaign coupled with requirements for reporting and disclosing certain contributions and expenditures.

The second approach is public funding of presidential campaigns.

The rationale for such sweeping regulation of campaigns is the federal government's interest in preserving the integrity of the electoral process.

Amicus Curiae contends that in judging the constitutionality of the challenged legislation, this important governmental interest must be narrowly construed as an interest in preventing the outright corruption of candidates and officials; further that there is no legitimate governmental interest in limiting the influence of wealth in election campaigns. Unlike elections, i.e. voting, campaigns are pure speech. The inequalities in exercising First Amendment rights which flow from inequalities in wealth are beyond the reach of the federal government.

Viewed from this perspective, the Sections of the Act regulating the private financing of federal election campaigns are overbroad in that they are not narrowly drawn to prevent the evil with which Congress is properly concerned. Such regulations represent significant burdens and limitations on First Amendment activity, especially with regard to minor parties, without any reference to the possibility that such activity might corrupt public officials.

The reporting and disclosure requirements are equally overbroad. The reporting requirements constitute a significant strain on the time and money available to minor parties. The disclosure requirements will present a real danger that the right of association will be chilled for all those who hold unpopular views. Again, such burdens are inflicted without regard to any possibility that the regulated activity will corrupt public officials.

II.

The FECA taken as a whole, and the public financing provisions in particular, are an unconstitutional intrusion by the federal government into the arena of public debate. The Act will significantly alter the advantages and disadvantages that various parties may have in federal election campaigns. The Constitution forbids the federal government from taking such a role in public debates. Further,

contrary to the purported intention of the Act, the public financing sections and the regulations on private financing further disadvantage those candidates not possessed of great wealth and therefore constitute an unconstitutional burden on the right to contend for public office.

ARGUMENT

I.

THE FEDERAL GOVERNMENT'S INTEREST IN PREVENTING THE CORRUPTION OF THE ELECTORAL PROCESS IS NARROWLY LIMITED BY THE FIRST AMENDMENT.

The FECA poses a fundamental issue regarding the First Amendment and elections. In its most basic terms, the issue is the relationship between free speech and money.

The Court of Appeals in deciding that the Act was constitutional, found that Congress had acted to protect the electoral process from the undue influence of wealth.

The Court adopted the observation that great wealth had the power to "unduly influence politics, an influence not stopping short of corruption." Slip opinion p. 1511

It is obvious that no First Amendment issues are raised by the use of money to bribe public officials. The distinction between legitimate partisan political activity and bribery is not so obscure as to escape common understanding. *U. S.* v *Harriss*, 347 U.S. 612, 74 S. Ct. 808, 98 L. Ed. 989.

The difficulty in terms of First Amendment freedoms arises when the undue influence of wealth does stop short of corruption.

The approach of the FECA is not to ban political activity, but to limit the amount of such activity in an effort to equalize the opportunity for such activity. The FECA purports to eliminate the undue influence of wealth by "limiting" the amount of money contributed to or spent by candidates in federal election campaigns.

Because of the necessary connections between money and political activity, limiting the influence of wealth must necessarily involve limiting political activity.

Because of this inevitable conflict with First Amendment activity, we are faced with a threshold question. Can the federal government regulate First Amendment activity so as to reduce the influence of wealth.

This issue should not be confused with cases in which the limitation on First Amendment activity results from a fee or costs imposed by the government. There can be no doubt that the government cannot so limit First Amendment activity. *Harper* v *Virginia Board of Elections,* 383 U.S. 663, 86 S. Ct. 1079, 16 L. Ed. 2d 169; *Bullock* v *Carter,* 405 U.S. 134, 92 S. Ct. 849, 31 L. Ed. 2d 92; *Grosjean* v *American Press,* 297 U.S. 233, 56 S. Ct. 444, 80 L. Ed. 660 (1936).

Here we are confronted with an attempt by government to correct the limitations on First Amendment activity which result from the market costs of such activity and the unequal access to various media of communications due to disparities in wealth.

Aside from election campaigns, the most important medium of ideas in this country are newspapers and television. Because the airways are public and broadcasters are licensed, television is not analogous to election campaigns.

Newspapers clearly represent a case where the wealthy have undue influence on election campaigns. Yet that impact may not be limited. *Mills* v *Alabama,* 384 U.S. 214, 86 S. Ct. 1434, 16 L. Ed. 2d 484 (1966). Recognizing the limited access to this powerful medium of all but the very wealthy, this Court considered a very limited compulsory access statute enacted by the Florida legislature in *Miami Herald Publishing Co.* v *Tornillo,* 418 U.S. 241, 94 S. Ct. 2831, 41 L. Ed. 2d 730 (1974). The statute in *Tornillo* allowed a candidate for public office to reply to newspaper attacks on his character or record. Thus, *Tornillo* presented a classic case of protecting the integrity of the political process from the undue influence of wealth.

Without regard to the benefits from such legislation, the Court found that the First Amendment prohibited the government from enforcing such an "access" law.

As the Court observed;

> "It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time." U.S. at p. ...., S. Ct. at p. 2840.

Given the fact that our society is marked by great disparities in wealth, and that wealth is often a prerequisite to the effective exercising of First Amendment rights, we are necessarily confronted with a dilemma. Shall we bear the social costs of having First Amendment rights unequally distributed accordiing to wealth, or shall we have governmental regulation of the exercise of those rights in order to redress this inequality. Needless to say there is no precedent for such regulation. Moreover, the First Amendment forbids "*governmental* restraint from the arena of public discussion." *Cohen* v *Calif.,* 403 U.S. 15, 29 L. Ed. 2d 384 (1971), 91 S. Ct. 1780, 1787, 88 (emphasis added).

In simple terms, our system of government opts for the costs which comes from foregoing government regulation of speech as being less costly than allowing the government a role in regulating First Amendment Activities.

Therefore, it is the contention of this brief that the proper concern of the government is with that undue influence of wealth that does *not* stop short of corruption.

As a corollory, the various sections of the FECA must bear a direct relation to the prevention of such corruption, if they are to be constitutional.

The cases of *Burroughs & Cannon* v *U.S.,* 290 U.S. 534, 54 S. Ct. 287, 78 L. Ed. 484 (1934); *U.S.* v *Harriss,* 347 U.S. 612, 74 S. Ct. 808, 98 L. Ed. 989; *U.S.* v *UAW,* 352 U.S. 567, 77 S. Ct. 529, 1 L. Ed. 2d 563, relied on by lower Court cannot be construed to broaden the government's legitimate interest in preventing corruption into a generalized interest to limit the influence of wealth on the political process.

Burroughs, supra, was concerned with the reporting and disclosure provisions of the Corrupt Practices Act. That act was challenged on the grounds that control of elections was vested in the states. The Supreme Court held that the

federal government's interest in preserving the integrity of the electoral process created a basis for regulating campaigns.

However, the Court narrowly defined the federal government's interest to protecting the electoral process from "violence" and "corruption," *supra,* U.S. p. 546, S. Ct. p. .....

Nor did the Court in *Burroughs* decide whether or not the disclosure laws violated the First Amendment.

In *Harriss, supra,* the Court took pains to restrict the act requiring registration of lobbyists so as to apply only to professional lobbyists dealing directly with legislators. As a result the Court avoided a governmental invasion of the First Amendment right to petition Congress. The Court found that there was a difference between petitioning Congress and the activity of professional lobbyists and that whereas Congress had a right to inquire into the sponsorship of the latter, Congress could not make similar inquiries of nonprofessional lobbying efforts even if such efforts were generously financed.

The lower Court's reliance on *U.S.* v *UAW* is misplaced. The UAW had been indicted for violating the Corrupt Practices Act by sponsoring a television broadcast designed to influence an election. The District Court held that the indictment failed to state an offense under the Statute.

Justice Frankfurter who wrote the opinion for the Court analyzed the legislative history of this law. The purpose of the analysis was to determine whether or not it covered the actions charged in the indictment.

The Court found that the purpose of the act was to "avoid the deleterious influences on federal elections resulting from the use of money by those who exercise control over large aggregations of wealth," *U.S.* v *UAW, supra,* U.S. p. 585, S. Ct. p. 538. The Court having found the indictment proper, the case was remanded for trial.

However, the Court specifically refused to rule whether or not Congress could constitutionally pass such legislation. *Supra,* U.S. p. 591, S. Ct. p. 541.

The wisdom of restricting the province of the federal government to protecting the political process from corruption as opposed to the "undue influence" of wealth was best expressed by Justice Rutledge, concurring in *U.S.* v *CIO,* 335 U.S. 106, 68 S. Ct. 1349, 92 L. Ed. 1849:

> The Government stresses the "undue influence" of unions in making expenditures by way of publication in support of or against candidates and political issues involved in the campaign rather than corruption in the gross sense. It maintains that large expenditures by unions in publicizing their official political views bring about an undue, that is supposedly disproportionate, sway of electoral sentiment and official attitudes. In short, the "bloc" power of unions has become too great, in influencing both the electorate and public officials, to permit further expenditures of their funds in directly and openly publicizing their political views. And the asserted evil is to be uprooted by prohibition of union expenditures as such, not by regulation specifically drawn to meet it.
>
> There are, of course, obvious differences between such evils and those arising from the grosser forms of assistance more usually associated with secrecy, bribery and corruption, direct or subtle. But it is not necessary to stop to point these out or discuss them, except to say that any asserted beneficial tendency of restrictions upon expenditures for publicizing political views, whether of a group or of an individual, is certainly counterbalanced to some extent by the loss for democratic processes resulting from the restrictions upon free and full public discussion. The claimed evil is not one unmixed with good. And its suppression destroys the good with the bad unless precise measures are taken to prevent this.
>
> The expression of bloc sentiment is and always has been an integral part of our democratic electoral and legislative processes. They could hardly go on without it. U.S. p. 143, S. Ct. pp. 1367, 1368.

II.

THE FEDERAL ELECTION CAMPAIGN ACT IS OVERBROAD IN THAT IT SUBSTANTIALLY BURDENS POLITICAL ACTIVITY REGARDLESS OF ITS POSSIBILITY OF CORRUPTING PUBLIC OFFICIALS.

Amicus contends that there is a definite and easily discernible difference between payments to a candidate or official in exchange for a specific consideration and contributions which further a candidate's campaign. The former is a bribe, the latter a political contribution. The fact that the political contributions (and votes) are frequently given for venal reasons instead of altruistic ones does not obscure the difference.

If indeed, the line between these two phenomenon is too vague to discern, then we cannot say that anyone has been properly convicted of bribing a public official. Nor does the difficulty of proving *scienter* in the cases of bribery obliterate the basic differences which exist between the two.

As argued above, the government has a legitimate interest in preventing bribery.

It has also been conceded that the FECA prescribes a significant scheme of limitations, regulations and public financing of the public debate called election campaigns.

Keeping the obvious in mind, the question is whether or not the FECA is

> ". . . narrowly drawn to meet the precise evil the legislature seeks to curb . . .
>
> If the evil is taken to be the corruption of national elections and federal officials by the expenditure of large masses of aggregated wealth in their behalf, the statute is neither so phrased nor so limited . . ."
>
> J. Rutledge concurring in *U.S.* v *CIO, supra,* U.S. pp. 141, 142, S. Ct. p. 1367.

The FECA does not limit contributions made in order to "buy" a public official, but limits contributions of every-

one, limits expenditures of all individuals, political committees, and candidates. Such limits are enacted without regard to the purpose for which the money is spent, nor to the context in which it is spent.

Similarly, the FECA imposes a reporting requirement on all contributions over ten dollars ($10.00) and a disclosure requirement on all contributions over one hundred dollars ($100.00) without regard to the purpose for or the context of such contribution.

Surely we are not to assume that all such contributions and expenditures are made for "corrupt" reasons, nor that all contributions and expenditures have the potential for corrupting the political process.

Nor can we deny that such limitations have a necessary effect of limiting the speech and organized political activity that such money makes possible.

In this regard the FECA is constitutionally defective for the same reasons that the Supreme Court struck down the subject Legislation in *U.S.* v *Robel,* 389 U.S. 258, 88 S. Ct. 419, 19 L. Ed. 2d 508 (1967). In *Robel,* the legislation in question made it illegal to work in any defense facility while belonging to a communist-action organization. There the right abridged was the right to belong to a political association. Membership was not forbidden, but was burdened by the subject job restriction. The government's right to protect defense plants against sabotage and espionage was recognized as being of fundamental importance. The act was declared unconstitutional because it was not based on a finding that the burdened association was related to the threat feared by the government.

> "(The) statute casts its net across a broad range of associational activity, indiscriminately trapping membership which can be constitutionally punished and membership which cannot be so proscribed . . . Thus (the Act) contains the fatal defect of overbreadth because it seeks to bar employment both for association which may be prescribed and for association which may not be proscribed consistently with First Amendment rights." *Supra,* S. Ct. pp. 424-425, U.S. pp. 265-266.

Similarly, the FECA proscribes contributions and expenditures which could be proscribed (bribes) and those which present no danger whatsoever of corruption.

It has been suggested that although the FECA reaches innocent behavior in its attempt to control illegal behavior, its impact on the First Amendment rights involved in that innocent behavior is incidental.

> ". . . We are not concerned with a ban on political activity, but with a limitation on amount, without any discrimination based on party or orientation of speech or activity." Slip op p. 1518.

Of course the alleged non-partisan character of the limitation would be completely irrelevant even if it were true. The First Amendment doesn't give the government power to infringe freedom of speech so long as it does so equally. Based on this criteria the complete silencing of criticism from anyone would be constitutional.

Obviously the salient consideration is the scope of the limitation and not its purported non-partisan character.

The limitation involved can be characterized as a limitation on the right to engage in political campaigns either as an individual or in a political party. The limitation arises from the burdens and limitations that the Act creates in financing that activity. Just as Congress has recognized the evils of money, so we must also recognize the necessity of money.

The limitations resulting from this act are especially heavy on independent candidates, poor candidates, new parties and minor parties.

(Precisely those categories of individuals who represent the most remote and hypothetical danger of corrupting the political process by campaigning for office.)

Once more we want to reiterate that it is of no moment that the burdens placed on the minor candidates are shared by major candidates. The burden to a minor party is no less a burden because a major party may be able to overcome an even greater burden.

More specifically some of the burdens and limitations on political activity resulting from the FECA are:

a. The costs of reporting all contributors of amounts over ten dollars ($10) can be substantial because of the need for the professional services of lawyers and accountants.

b. The disclosure of the identities of all contributors of amounts in excess of one hundred dollars ($100) will burden the effort to collect funds necessary to finance a campaign. (discussed below)

c. The one thousand dollar ($1000) limit on contributions require a greater numerical number of supporters in order to launch a campaign. (There is no requirement in the Constitution that political activity is permitted only to those persons who are popular)

d. The limit on expenditure of individuals cuts off that person's free speech at an arbitrary figure of One thousand dollars ($1000).

e. The one thousand dollar ($1000) limit on contributions restricts an individual's political activity regardless of his intention to corrupt public officials or the political process.

f. The limit on expenditure is most likely to limit debate at its crucial point, the eve of the election.

These limits and burdens, with regard to all candidates, are significant. To new parties and minor parties they may be fatal. The combination of disclosure, the costs of reporting, and the limitation on the contributions of a few wealthy supporters could mean that the minor parties will not be able to launch a campaign.

However, even if they do overcome such hurdles, their First Amendment activity will be seriously curtailed by their increased costs and decreased revenue. Their activity will be so curtailed without regard to whether or not such First Amendment activity bears any relationship to the danger Congress should to prevent. Thus the FECA is overbroad. *Cohen* v *Calif.*, 403 U.S. 15, 91 S. Ct. 1780, 29 L. Ed. 2d 284 (1971), *Branderberg* v *Ohio*, 395 U.S. 444, 89 S. Ct. 1827, 23 L. Ed. 2d 430 (1969), *U.S.* v *Robel, supra.*

III.

PUBLIC FINANCING OF POLITICAL CAMPAIGNS IS FORBIDDEN BY THE FIRST AMENDMENT.

The First Amendment forbids governmental involvement in the arena of public discussion.

> "The Constitutional right of free expression . . . is designed . . . to remove governmental restraint from the arena of public discussion." *Cohen* v *Calif., supra,* U.S. p. 24, S. Ct. at 1787, 1788.

Just as the government cannot tax nor license First Amendment freedom, *Grosjean* v *American Press Co.,* 297 U.S. 233, 56 S. Ct. 444, 80 L. Ed. 660 (1936), the federal government cannot establish franchises for the exercise of First Amendment rights.

Regardless of the criteria established for the distribution of these funds, the fact remains that the government will give millions of dollars to some candidates and not to others. The fact that the recipients have proven themselves more popular is no justification for this governmental involvement in the arena of free speech.

When the government sponsors certain ideas or candidates, it infringes the rights of opposing ideas or candidates by disadvantaging them in the market place of idea. The fact that non-governmental wealth creates similar advantages does not minimize the First Amendment's injunction against such governmental interference.

Not only does public funding give certain candidates an advantage over others to the tune of several million dollars, but the contribution limitations contain similar inequalities.

The fact that a wealthy person can give up to $25,000 to himself, means that a wealthy candidate has a substantial headstart over his less fortunate rivals. The fact that private forces lead to the same result is no justification for a governmental scheme which makes it easier for the wealthy to run than the unwealthy.

Similarly, the one thousand dollar ($1,000) limit on contribution will mean different things to different candidates. For the candidates with the support of the wealthy minority, it will mean that he will have to increase the number of his contributors x number of times. For the candidate with few wealthy supporters, it will mean that the money lost from his few wealthy contributors may have to be made up by one hundred times x number of contributors.

What substantial governmental interest can justify this intrusion in the area of First Amendment activity?

Public financing which rewards the popular has no direct relation to preventing corruption.

Aside from the cynical prediction that popular candidates will be corrupted and therefore must be bribed by the public so as to prevent them from taking private bribes, there is nothing but a hope that such funding will curb corruption.

Against such fond hopes lies the inescapable conclusion that public funding gives an advantage to certain candidates over others. This intrusion in the arena of public debate is unconstitutional regardless of how the fortunate candidate is chosen or how beneficient was the motive of Congress in passing such legislation.

In short, public funding increases the hegemony of the Republican and Democratic parties. The importance of new, third or minor parties to our democratic system has been repeatedly recognized. *Sweezey* v *New Hampshire,* 354 U.S. 234, 77 S. Ct. 1203, 1 L. Ed. 2d 1311 (1957), *Williams* v *Rhodes,* 393 U.S. 23, 89 S. Ct. 5, 21 L. Ed. 2d 24; *Jeness* v *Fortson,* 403 U.S. 437, 91 S. Ct. 1970, 29 L. Ed. 2d 554.

Moreover, their right to contend for power is guaranteed by the First Amendment.

A monopoly of two parties is still a monopoly.

Nor does the fact that the Act does not forbid or ban third-parties answer the challenge to the act. The government cannot intervene and give an advantage to one party over another in their competition for votes. The ban on such governmental interference is complete and it does not matter how "non-partisan" the government is in deciding who is the beneficiary of public funds. It is not the process of allocating public funds which is here in question,

it is the necessary and inevitable result of such allocation which involves the government in aiding one (or two) parties against their challengers.

Cases limiting access to the ballot are not analogous to public funding. Government printing of the ballot is a duty imposed on it by Art I, §4(1) of the Constitution. It follows that it has a duty to make the ballot comprehensible to the voter.

The government has no duty to finance political campaigns. The connection between such financing and a legitimate governmental interest is remote and speculative. The impact of such funding on the competition for voter allegiance is immediate and substantial.

Thus, the public financing sections of the FECA are unconstitutional.

When the public funding provisions are viewed in the totality of the legislative scheme of the FECA, we see that they represent the very danger the Court was concerned with in *Miami Herald* v *Tornillo, supra*:

> "It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with the First Amendment . . ."

IV.

THE DISCLOSURE REQUIREMENT IS OVERBROAD IN THAT IT SUBSTANTIALLY CHILLS THE FIRST AMENDMENT RIGHT OF ASSOCIATION WITHOUT REGARD TO THE POSSIBILITY THAT SUCH ACTIVITY WILL CORRUPT PUBLIC OFFICIALS.

The FECA requires all contributions over one hundred dollars ($100) to be disclosed. The Act makes no exceptions for cases where the contribution goes to a candidate who has little chance of winning. Nor does the Act distinguish between the contributions of wage earners and those of corporate executives.

While it is true that the probability of the disclosure requirement having a chilling effect and the degree of such

effect will depend on the situation of the individual contributor and the popularity or unpopularity of the candidate receiving the contribution, it is inescapable that the disclosure requirement will have a wide reaching chilling effect in light of its scope.

Further, regardless of whatever chilling effect it has, the disclosure requirement represents a new and precedent setting invasion of privacy by the federal government. The disclosure requirement is so broad and applies to so many contributions, that it is tantamount to allowing the federal government to register all persons who wish to be politically active. For all of the reasons expressed in *U.S.* v *Robel, supra,* the disclosure provisions are overbroad.

Nor is the case of *Burroughs and Cannon* v *U.S., supra,* authority for the constitutionality of such a broad disclosure law. The Court in *Burroughs* was clearly not faced with a First Amendment challenge to the disclosure requirement of Corrupt Practices Act and did not decide the First Amendment issue.

With regard to the question of whether or not the Court should consider the chilling effect of the disclosure section on minor parties in the absence of such party's participation in this case, *Amicus Curiae* relies on and cites to this Court the dissent of Justice Bazelon to the opinion of the Court of Appeals on this point.

Not only is the disclosure section overbroad in its sweeping effect, but it has been proven historically to be an inadequate and ineffective tool for preventing corruption.

The lower Court has used this record of ineffectiveness as a rationale for supporting more sweeping regulations. (Slip op p. 1519)

Normally, we would agree that the choice of means to achieve a legitimate governmental purpose is a legislative function. However, in the area of the First Amendment, the Court must use its scrutiny to determine if the means are "narrowly related" to the purpose.

The lower Court's opinion amounts to the proposition that if a minor restriction of First Amendment right is effective, wholesale restrictions are justified.

This rationale is not only destructive of the Constitutional limitations on governmental interference in the public debate, but is not supported by history or logic.

The other aspect of the failure of reporting requirements to stem corruption, is the success of our democratic institutions to limit and uncover corruption when it has occurred.

The least drastic means to insure political integrity envisioned by the Constitution is to allow the challengers to those in political office to have free reign to mount their challenge.

The best method of preventing corruption is the close scrutiny of official action. The most careful detectives in this process are often political opponents.

The federal government has no interest in restricting or burdening the political activity of political opponents in favor of a committee appointed by incumbents.

When the federal government becomes the watchdog of the integrity of political process instead of the citizenry performing that process, the First Amendment has been turned upside down and should be amended to read:

> Congress shall make adequate laws respecting freedom of speech, of the press, the right of people peaceably to assemble, and to petition the Government for a redress of grievances, so as to protect the people from being deceived by corrupt politicians.

To proceed in such a fashion is to grant Congress a trust which the framers of the Constitution warned against; making the Congress the guardian of our political freedoms is to trust the wolf to guard the sheep.

CONCLUSION

CoDEL urges that the Federal Election Campaign Act's regulation of the private financing of election campaigns be declared to be an unconstitutionally overbroad regulation of legitimate political activity;

That the public financing provisions be declared to be an unconstitutional intrusion by the federal government into the public debate; and

That the disclosure requirements be declared an unconstitutional abridgement of the freedom of association.

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Nos. 75-436 and 75-437

James L. Buckley, et al.,

Appellants,

vs.

Francis R. Valeo, Secretary of the Senate, et al.,

Appellees.

On Appeals from the United States Court of Appeals
for the District of Columbia Circuit and
the United States District Court
for the District of Columbia

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IN THE

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OCTOBER TERM, 1975

Nos. 75-436 and 75-437

JAMES L. BUCKLEY, et al.,

Appellants,

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FRANCIS R. VALEO, SECRETARY OF THE SENATE, et al.,

Appellees.

On Appeals from the United States Court of Appeals
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the United States District Court
for the District of Columbia

Brief *Amici Curiae*

INTEREST OF AMICI CURIAE

In 1974, the voters of California approved by approximately a two-to-one margin an initiative measure known as Proposition Nine, which enacted the Political Reform Act of 1974. The Act provides, *inter alia,* for disclosure of campaign contributions and expenditures of $50 or more, and for limitations on the expenditures permitted to be made by candidates for state-wide office or in respect of

initiative or referendum campaigns.[1] The Fair Political Practices Commission is created by Chapter 3 of the Act, and is charged with "primary responsibility for the impartial, effective administration and implementation" of the new law. CALIF. GOVT. CODE § 83111.

The Commission is joined in this brief by three other states. These states, like California, have enacted laws compelling, among other things, disclosure of contributions and limiting election campaign expenditures.

It is apparent that recent events have generated renewed and enhanced interest in election reform legislation. In some instances, the result has been more vigorous enforcement efforts as to existing (and perhaps theretofore underenforced) laws. In other cases, such as California, new legislation has resulted. To a considerable extent, these laws are now to be administered and enforced with a dedication—tempered, we trust, by sensitivity for the rights of political freedom and expression—not previously experienced. Yet the present case represents a concerted effort to obtain a broad judicial declaration that such laws cannot be squared with the First Amendment.

Amici believe the federal law before this Court is constitutional. *Amici* also believe that the various laws enacted by the states represented here (and, doubtless, by other states as well) represent valid efforts to protect the integrity of their political systems. They are concerned, therefore, that the effects on their respective experiments to remove the corrosive effects of money on the political process of any decision herein not be overlooked and to that end file this brief.

---

1. Appellants are in error in stating that California has adopted contribution limits. See App. Brief, at 137. California law imposes no such limits, and this *amici curiae* brief does not address the constitutionality of that aspect of FECA.

SUMMARY OF ARGUMENT

I

Appellants seek the adoption of a per se rule condemning all campaign expenditure limitations. Such limitations have been adopted by thirty-seven states, and those statutory schemes vary considerably. While *amici* believe that the provisions of FECA are constitutional, in all events a per se disapproval of expenditure limitations is not warranted and care should be taken to avoid invalidation of statutes not presently before the Court.

The Constitution does not in principle forbid expenditure limitations. They serve fundamental and compelling governmental interests, including the reduction of competitive pressures upon candidates to raise large amounts of money, correction of the denial of effective access to the political system to those without substantial wealth, and counteraction of the impression (perhaps the reality) that money can be translated into votes. It cannot, of course, be denied that if limitations are set at an unreasonably low level, serious constitutional problems would arise to the extent that candidates are prevented from carrying their message to the electorate. But, as Appellants admit, "campaign money is subject to the law of diminishing marginal returns." App. Brief, at 97. Limitations which permit effective campaigning, yet diminish the disabilities that additional amounts of money inject into the political process, should be upheld.

Appellants urge that the even-handed limitations imposed by FECA benefit incumbents, and imply that since the statute was adopted by a legislative body whose members benefit by such legislation, the law should be viewed with suspicion. Many of the advantages said to be enjoyed by members of Congress are not shared by incumbent state officials, who do not have the franking privilege and rarely

have large staffs. Moreover, some state laws establish a lower limitation for an incumbent than the limitation applicable to the challenger. *E.g.,* CALIF. GOVT. CODE § 85101. Other potential advantages of incumbency can also be limited by legislation. *E.g.,* CALIF. GOVT. CODE §§ 89000-01.

Other aspects of the federal statute challenged in this Court are treated differently in the thirty-seven state counterparts. For example, Appellants challenge the $1,000 limitation imposed by FECA on expenditures by independent committees and individuals. Some state statutes handle the problem of independent expenditures differently. In California, for example, any independent committee or individual may spend up to $10,000 without restraint, and in some circumstances can spend as much as an additional $140,000. *See* CALIF. GOVT. CODE § 85104.

In short, the subject of campaign expenditure limitations has been seriously addressed by the people in and the legislatures of a number of states in recent years. The Court should hesitate to curtail this experiment in eliminating the excessive role played by money in political campaigns.

II

Forty-five states require disclosure of campaign contributions and their sources; of these, all but four set the minimum threshold for disclosure at $100 or $101 or less.

Appellants' reliance on the *NAACP* line of cases is based upon the faulty premise that the donation of money to political candidates is "speech" or "association" protected by the First Amendment. The First Amendment protects communication and not conduct. The giving of money, while it may facilitate communication by the recipient, is not an act of expression. Restraints on the giving of money (and it must be remembered that in this case the alleged restraint is the indirect "chill" disclosure is said to

achieve) do not forbid supporters of a candidate from giving speeches, writing articles, distributing pamphlets, or the like. Indeed, membership in a political party or organization is not subject to disclosure. Only the exchange of money has that consequence. No decision of this Court holds that the contribution of money is an act within the umbrella of the First Amendment, and such a holding would require a fresh appraisal of existing laws prohibiting contributions by federal employees, corporations and labor unions to candidates for federal office.

Even if the making of political contributions were protected by the First Amendment, Appellants' constitutional challenge would require a determination of whether governmental interests justify the indirect infringement of those First Amendment values. Appellants concede that, as a general principle, disclosure requirements are constitutional and, indeed, are "the proper solution" to many problems in the political process. App. Brief, at 171. They contend, however, that FECA's disclosure is overbroad in that it applies to all contributions in excess of $100, a feature which it shares with some forty-one states. The fixing of the appropriate threshold is, however, a legislative matter, and in this instance the line has been drawn at a reasonable point. Congress could reasonably conclude that contributions of $100 do have the potential of earning influence or access. Moreover, a substantially larger threshold would permit the concealment of significant illegal corporate or labor contributions in amounts just under the threshold. Similarly, those bent on noncompliance could make a contribution of just under the maximum amount and arrange for others to do likewise. For all of these reasons, the judgment of Congress should be respected.

Appellants also assert that the Constitution requires the exemption from disclosure of contributions to minority

parties and independent candidates. The Court of Appeals properly rejected this claim, noting that the present record contains only scant evidence of a "chilling effect" on such contributions. Even if the record had more persuasively supported Appellants' factual claims in this regard, disclosure would nonetheless be constitutional because it is supported by compelling governmental interests and because the exception which Appellants would carve is unworkable and undesirable. In the first place, the problems of defining those candidates and parties entitled to exemption would be enormous. Even if it could be accomplished, serious questions of fairness and evenhandedness would be presented. Finally, minority candidates can *affect* the outcome of an election even if they do not emerge victorious. Every vote which a third party or independent candidate receives is a vote which otherwise might have been cast for a major party candidate. There is, for these reasons, a substantial public interest in disclosure of the sources of financing of all candidates, not merely those with the greatest possibility of success.

I.

CEILINGS ON CAMPAIGN EXPENDITURES ARE NOT UNCONSTITUTIONAL PER SE. EACH LIMITATION STATUTE MUST BE SEPARATELY SCRUTINIZED AND UPHELD IF IT IS JUSTIFIED BY A COMPELLING GOVERNMENTAL INTEREST

Amici believe that the expenditure limitations of the FECA are carefully drawn to serve the compelling governmental interest of minimizing the disproportionate influence over politics and government enjoyed by those individuals and institutions able to pump large amounts of money into election campaigns. We believe that the expenditure limitations are constitutional and should be upheld.

It is not our purpose, however, to address the specific constitutional merits of the expenditure limitations imposed by the FECA, a task which can better be performed by the parties. Rather, we hope merely to dissuade the Court from adopting, either explicitly or by implication resulting from unnecessarily broad language, any sort of per se rule regarding the constitutionality of campaign expenditure ceilings.

Although Appellants urge a finding of per se unconstitutionality (App. Brief, at 79-86), their arguments do not support such a conclusion but consist essentially of attacks on the specific provisions of FECA. We do not find these attacks persuasive, but even if they are accepted the Court should make it clear that limitation statutes containing different provisions and applicable in different political contexts will be upheld if under scrutiny they meet the requisite constitutional standards.

In recent years, thirty-seven states have adopted statutes limiting campaign expenditures. See "Analysis of Federal and State Campaign Finance Law" (Cong. Research Service, Library of Congress, June, 1975), at 31-43. These statutes have not derived from a common model; rather, almost without exception the people or the legislature of each state have done their own drafting, in light of local problems and conditions. It is probably rare that in an area of such significance the states have so effectively performed their roles as laboratories of social reform in so diverse a fashion. To be sure, the state legislation, like the federal, regulates in an area which, under the Constitution, is highly sensitive, and perhaps some of the statutes will fail to survive whatever degree of scrutiny the Court believes is appropriate. But when not only Congress but so many states have found that legislation is necessary, the Court

should hesitate to sweep too broadly. As the Court said (echoing a theme expressed often in the decisions of this Court) in another context, "the judiciary is well advised to refrain from imposing upon the States inflexible constitutional restraints that could circumscribe or handicap the continued research and experimentation so vital to finding even partial solutions . . . and to keeping abreast of ever-changing conditions." *San Antonio School District v. Rodriquez,* 411 U.S. 1, 43 (1973).

Appellants would have the Court believe that expenditure limitations are premised on the notion that there is such a thing as "too much" speech, a notion that is said to be inconsistent with the First Amendment. App. Brief, at 80. They misstate the case. The problem is not that there is too much speech in campaigns but that there is too much money. And the ever-increasing influx of money has produced a number of pernicious influences on the American political system. It has resulted in intense competitive pressures upon candidates to raise large amounts of money to finance their campaigns, has foreclosed or diminished effective access to the system to all but those that can afford it, and has created the impression, and possibly the reality, that money can distort the electoral process.

Spending limitations are designed to counteract these deleterious effects. They will relieve the competitive pressure to raise vast amounts of money, and thereby make it more likely that candidates will be able (1) to reject contributions which threaten their independence; (2) to spend more time representing their constituents by studying issues and governmental problems instead of attending fund-raising events and cultivating contributions; and (3) to finance their campaigns with contributions from legitimate supporters rather than special interests seeking access

and influence. Furthermore, spending limitations will help to open up the political process and to increase participation by those who have not been able to afford it as the ante has increased. Finally, limitations should counteract the illicit relationship between money and votes, and by so doing should restore confidence on the part of the electorate that public office cannot simply be bought.

Unquestionably, these are valid governmental objectives. Nevertheless, it is undeniable that limitations could be set at so unreasonably low a level as to prevent candidates from carrying their message to the electorate; we do not suggest that such laws should be immune from First Amendment attack. Limits which are in fact reasonable, however, do not suffer this infirmity because, as Appellants admit, "campaign money is subject to the law of diminishing marginal returns." App. Brief, at 97. Limitations which permit effective campaigning yet lessen the competitive pressure to raise funds should be upheld because they serve vital governmental interests and infringe, if at all, only minimally and incidentally on substantive communications.

Accordingly, the task for the Court is to scrutinize closely the specific provisions of FECA in the specific context of the federal elections which are regulated. That no per se rule is possible and that the Court should avoid needless generalizations appears affirmatively from Appellants' arguments purportedly in favor of a per se rule. For example, Appellants present the Court with a hypothetical state, apparently modeled on New Hampshire, in which they assert that because of particular local conditions higher than usual expenditures may be necessary. App. Brief, at 79-80. Appellants cannot seriously deny that Congress has good reason to impose uniform standards in federal elections in light of the serious drafting problems, to say nothing of equal protection considerations, which any alter-

native would create. *Cf.* pp. 26-27, *infra*. But however that may be, surely the fact that peculiar conditions may exist in New Hampshire has no relevance for the statutes administered by *amici*. The statutes of each state must be measured against the circumstances in that state. Indeed, Appellants themselves strongly assert that circumstances relating to limitations vary greatly from state to state. App. Brief, at 94. Their assertion illustrates the impossibility of a generalized approach.

At the center of Appellants' attack on the FECA expenditure limitations is the contention that the limitations benefit incumbent members of Congress. App. Brief., at 67-68, 87-104. Appellants imply that since the members had a conflict of interest in drafting and approving the legislation, the statute should be viewed with suspicion. A more probable reading of recent political history is that Congress adopted reform legislation against its members' perceptions of self-interest as a result of pressure from their constituents. However that may be, the Court certainly cannot establish a per se rule based on an assumption that thirty-three state legislatures[2] acted in the self-interest of members rather than in the public interest. State legislators do not have the franking privilege or large staffs which appellants assert slant even-handed limitations in favor of incumbent Congressmen. Moreover, in many states expenditure limitations were enacted along with provisions designed to equalize some of the advantages enjoyed by incumbents. In California, for example, the Political Reform Act establishes a spending limitation for an incumbent seeking reelection to the same office which is ten percent below the limitation imposed upon a challenger. CALIF.

2. The other four states which have adopted spending limitations did so by initiative.

GOVT. CODE § 85101. Moreover, an incumbent who has filed a declaration of candidacy is prohibited from sending any legislative newsletter or mass mailing at public expense. CALIF. GOVT. CODE § 89001. In the same spirit, a candidate's position on the ballot must be determined without regard to whether the candidate is an incumbent. CALIF. GOVT. CODE § 89000.

Appellants' contention that expenditure limitations are the product of incumbent legislators seeking electoral advantage also is disproved by the fact the voters of at least four states—California, Idaho, Missouri and Washington—adopted some form of expenditure limitation via the initiative process.

Appellants' proposed per se rule condemning expenditure limitations should also be rejected because the specific provisions of the various statutes adopted by the states contain significant differences. Many of the state statutes apply to situations without any analogy in the federal legislation. For example, there are no federal ballot measure or public question elections, but such elections are significant in states and localities which require voter approval for constitutional and charter amendments and bond issues, and which in some cases permit direct legislation by the voters in the form of the initiative and referendum. In such elections the disparity in spending on both sides may be more of a problem than the total spending, and laws adopted by some states to equalize spending (*e.g.*, CALIF. GOVT. CODE §§ 85300 et seq.) are designed to enhance rather than infringe First Amendment values. *Cf. Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 375 (1969); *CBS v. Democratic National Committee*, 412 U.S. 94 (1973).

Even as to candidate elections, the limitations statutes contain significant differences. To take a single example, Appellants make much of the federal $1,000 limitation on expenditures by committees and individuals acting inde-

pendently of the candidate. App. Brief, at 107-15. This limitation is a justifiable and necessary provision to prevent circumvention not only of the expenditure ceilings but also of the federal limit on contributions. But if the Court believes the federal provision is too restrictive it should take care to reserve judgment upon state statutes, many of which approach the problem of independent expenditures differently. See Note, 88 HARV. L. REV. 1111, 1254-56 and n.122 (1975), which describes the variety of state statutes. Again looking to California by way of example, any independent committee (and this includes individuals as they can be "committees", CALIF. GOVT. CODE § 82013) may spend up to $10,000 without being subject to the limitations provisions of the Act; moreover, they may spend as much as another $140,000 (adjusted for cost of living increases) provided that the total expenditures by independent committees for a particular candidate do not exceed the latter figure. CALIF. GOVT. CODE § 85104. The effect of these provisions is to prevent circumvention by a candidate of the Act's expenditure limitations without any real, as opposed to a theoretical, infringement of an individual's opportunity to speak. The distinction is potentially significant, for it was the failure of the Washington limitations statute to allow for independent individual expenditures which contributed heavily to the court's invalidation of it; and it was that aspect alone upon which the three concurring justices rested. See *Bare v. Gorton,* 526 P.2d 379, 385 (Wash. 1974).[3]

The point here, however, is not to debate the constitutionality of California's law, or that of any other state, or to suggest that the California approach is superior to that

3. The concurring justices stressed that a properly drawn limitation statute might well be upheld. *Id.*, at 385. *Cf. State v. Conifer Enterprises,* 508 P.2d 20 (Wash. 1973) (upholding prohibition of expenditure of funds to pay initiative petition signature solicitors)

contained in the FECA. Rather, the purpose of *amici* is to illustrate that each state statute must be carefully examined with respect to its particular provisions, and the context in which it will operate, before a judgment regarding its constitutionality can be made. *Compare, e.g., Williams v. Rhodes,* 393 U.S. 23 (1968) *with Jenness v. Fortson,* 403 U.S. 431 (1971).

Thousands of American citizens and state legislators have worked hard in their respective states to formulate expenditure limitations that would improve the democratic process without infringing on First Amendment rights. Indeed, the purpose has been to enhance First Amendment values by increasing meaningful participation in the political process. In a few states millions of voters have directly approved such legislation. We urge that this Court not abort these efforts by per se rules founded on broad generalizations that blur or ignore significant distinctions between the approaches and circumstances of the various states. Accordingly, whatever the Court's decision regarding the federal legislation—and we reiterate our belief that FECA is constitutional—each state statute is entitled to be judged on its own merits.

II

CAMPAIGN CONTRIBUTION DISCLOSURE LAWS ARE CONSTITUTIONAL

In the previous section of this brief dealing with campaign expenditure limitations, we attempted to point out a number of points of rational difference between the FECA and various state laws. In view of the breadth of the challenge to the disclosure requirements of the FECA, however, such points of distinction are not readily found. The broad attack on the campaign contribution disclosure laws pressed

in this Court would, if successful, seriously threaten like disclosure requirements in at least forty-one states. Accordingly, in this portion of our submission we find ourselves compelled to address the merits directly.

Appellants vigorously press their claim despite their admission that in general contribution disclosure is an appropriate and effective method of deterring political corruption and improper conduct. See App. Brief, at 171. The essence of Appellants' challenge to the federal disclosure requirements is, as we understand it, two-fold: they apparently believe that the law requires too much disclosure in that contributions of as little as $100 must be reported (*id.*, at 184-89) and they oppose disclosure of contributions to "unpopular" or "minority" parties or candidates (*id.*, at 178-84).

Our submission here stresses three propositions: *First,* Appellants' reliance upon the *NAACP* line of cases is based upon the faulty premise that the *donation of money* to political candidates or organizations is "speech" or "association" protected by the First Amendment in precisely the same way as is membership in a political or social-action organization; we think it is not. *Second,* compelling governmental interests justify disclosure not only of extremely large contributions but of lesser ones as well. *Third,* it would be impractical and undesirable to exclude from the ambit of disclosure laws "unpopular" or "minority" candidates, and the Constitution does not command that result.

A. Contributions of Money Are Not Communications Protected by the First Amendment.

The cases on which Appellants rely begin with *N.A.A.C.P. v. Alabama,* 357 U.S. 449 (1958). None of them holds that the giving of money to a political candidate—as distinguished

from joining an association or making a speech or distributing a pamphlet—is protected by the First Amendment. The issue in these cases was whether the state could compel disclosure of or information from an organization's *membership lists* (*e.g., N.A.A.C.P. v. Alabama, supra; Louisiana ex rel. Gremillion v. N.A.A.C.P.,* 366 U.S. 293 (1961); *Gibson v. Florida Investigation Committee,* 372 U.S. 539 (1963)), whether an individual could be compelled broadly to disclose his political associations in order to teach in the public schools (*Shelton v. Tucker,* 364 U.S. 479 (1969)), or whether an individual distributing a leaflet could be required to affix his name and address (*Talley v. California,* 362 U.S. 60 (1960)). In *Shelton v. Tucker, supra,* and in *Bates v. Little Rock,* 361 U.S. 516 (1960), the challenged law required disclosure of membership and amounts contributed; significantly, however, in each case the Court discussed the issues as if all that was at stake was the requirement that *the names of members* be disclosed. Thus, in striking down the disclosure requirement in *Bates,* the Court remarked that "compulsory disclosure of membership lists . . . would work a significant interference with the freedom of association of [the N.A.A.C.P.'s] members." *Id.,* at 523-24. Indeed, this entire line of cases was recently characterized by the Court as establishing that "[w]hen a State seeks to inquire about an individual's *beliefs and associations* a heavy burden lies upon it to show that the inquiry is necessary to protect a legitimate state interest." *Baird v. Arizona,* 401 U.S. 1, 6-7 (1971) (emphasis added).

It has long been held that the First Amendment protects *communication* and not *conduct. See, e.g., Giboney v. Empire Storage and Ice Co.,* 336 U.S. 490, 498-503 (1949); *Cox v. Louisiana,* 379 U.S. 536, 555; 379 U.S. 559, 563 (1965) (picketing); *Zemel v. Rusk,* 381 U.S. 1, 16-17 (1965) (right of speech and free inquiry does not include right to travel

to foreign country); *United States v. O'Brien,* 391 U.S. 367 (1968) (draft card burning); *Saxbe v. Washington Post Co.,* 417 U.S. 843 (1974) (right of press inquiry does not preclude limitations on press access within prison); *Pell v. Procunier,* 417 U.S. 817 (1974) (same). The Court recently observed that "the states have greater power to regulate nonverbal, physical conduct than to suppress depictions or descriptions of the same behavior." *Miller v. California,* 413 U.S. 15, 26 n. 8 (1973). In *Cohen v. California,* 403 U.S. 15 (1971), the Court carefully distinguished pure communication from "separately identifiable conduct . . . which, on its face, does not necessarily convey any message and hence arguably *could be regulated without effectively repressing* [*petitioner's*] *ability to express himself.*" *Id.,* at 18 (emphasis added).

The distinction between the standards applicable to laws which regulate speech and those which regulate conduct was clearly drawn in *United States v. O'Brien, supra,* at 376-77, where the burning of a draft card was defended as an act of symbolic speech reflecting opposition to the Vietnam War:

> We cannot accept the view that an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea. However, even on the assumption that the alleged communicative element in O'Brien's conduct is sufficient to bring into play the First Amendment, it does not necessarily follow that the destruction of a registration certificate is constitutionally protected activity. This Court has held that when "speech" and "nonspeech" elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms. To characterize the

> quality of the governmental interest which must appear, the Court has employed a variety of descriptive terms: compelling; substantial; subordinating; paramount; cogent; strong. Whatever imprecision inheres in these terms, we think it clear that a government regulation is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

In the case of undisclosed contributors, of course, there is not even the possibility—as there was in *O'Brien*—that the conduct (there the burning of a draft card) is itself intended to communicate an idea. There is, moreover, no assurance that the money contributed will be used for purposes of facilitating speech. Political contributions are used for a variety of purposes other than the actual expression of views by the candidate. They may, for example, be used for further fund raising. Unless forbidden by law, they may even be used by the recipient to defray the expenses of public office. Finally, to the extent that a contribution is used for the expression of a candidate's views, the donor understandably will not (and surely *should* not) have any control over the *content* of the candidate's expression. Thus at best the contribution of money is several steps removed from speech itself.

The friends and supporters of the candidate or party are not restrained by the disclosure requirement from communicating their ideas: they may give speeches, write articles, and distribute pamphlets without disclosure under the Act.[4] The fact of membership in a political organization

4. Disclosure evidently would be required, however, if an individual directly expends more than $100 in these endeavors. 2 U.S.C. §434(e).

is likewise not subject to disclosure. It is only the giving of money or other things of value that is the subject of the required reports.

It is not surprising that the Court has never held that the mere exchange of money is an act within the umbrella of the First Amendment. Such a holding would require the fresh appraisal of a number of well established federal laws. For example, it has long been the law that federal employees may not contribute to the campaigns of persons seeking election to federal office (18 U.S.C. § 607), nor may federal officials accept such contributions (18 U.S.C. § 602). *See, e.g., Brehm v. United States,* 196 F.2d 769 (D.C. Cir.), *cert. den.,* 344 U.S. 838 (1952). The constitutionality of such a prohibition was upheld in *Ex Parte Curtis,* 106 U.S. 371 (1882); *accord*: *United States v. Wurzbach,* 280 U.S. 396 (1930). Subsequently, the Court in *United Public Workers v. Mitchell,* 330 U.S. 75, 97 (1947) spoke with apparent approval of the ban upheld in *Curtis,* adding:

> The conclusion of the Court, that there was no constitutional bar to regulation of such financial contributions of public servants as distinguished from the exercise of political privileges such as the ballot, has found acceptance in the subsequent practice of Congress. . . .

Likewise, federal law has for many years prohibited corporations and labor unions from making contributions in federal elections. 18 U.S.C. § 610. The Court has never decided a case as to the constitutionality of these prohibitions although the lower courts have upheld them.[5]

5. See *United States v. Boyle,* 482 F.2d 755 (D.C. Cir.), *cert. den.,* 414 U.S. 1076 (1973). *United States v. Pipefitters Local Union No. 562,* 434 F.2d 1116 (8th Cir. 1970), *rev'd. on other grounds,* 407 U.S. 385 (1972); *see also Egan v. United States,* 137 F.2d 369 (8th Cir.) *cert. den.,* 320 U.S. 788 (1943) (upholding prohibition in Public Utility Holding Act of 1937 against contributions by registered utility holding company). It is true that some members of the Court, in separate opinions, have expressed doubts as to the constitutionality of Section 610, but those concerns went to the restraint of that section upon the communication of ideas (in union-financed publications or communications) and not to the contribution of dollars to candidates or parties. *United States v. C.I.O.,* 335 U.S. 106 (1948); *United States v. International Union,* 352 U.S. 567 (1957); *Pipefitters v. United States,* 407 U.S. 385 (1972). The argument in these cases simply does not reach the contribution of money to a candidate; in that respect, it is significant to note that one of the dissenters, Mr. Justice Douglas, observed in *International Union* that large union contributions could be prohibited. 352 U.S. at 598 n. 2.

Under the circumstances, there is simply no basis in the cases decided by the Court for Appellants' assumption that the First Amendment protects the act of giving money to a candidate or political party. The point is of critical significance. Appellants contend that, under cases such as *N.A.A.C.P. v. Alabama,* the disclosure of contributions is like the disclosure of membership and must be justified by a compelling governmental interest. But that kind of rigorous judicial scrutiny, designed for the protection of core First Amendment rights, is misapplied to the exchange of money; moreover, in this phase of the case (as distinguished from that dealing with the portion of the Act limiting the amount which an individual may contribute), the attack is necessarily tangential because at the most disclosure can have only an indirect effect upon contributions.

To be sure, money contributed will facilitate speech. It can—although need not necessarily—be used to buy pamphlets or television air time. But it is one thing to say that the candidate has a right to speak and quite another to say that a supporter has the right to give the candidate money. The supporter's rights of speech and association are not restricted, let alone "chilled" by the threat of disclosure. Private support, personal assistance (such as the donation of supporters' labor) and the contribution of ideas, position papers, and draft speeches are not infringed nor is disclosure required.

The Court of Appeals recognized these principles (Slip Op., at 1516-17), and characterized the scope of review as defined by *United States v. O'Brien, supra.* Its opinion suggests, however, that in fact it applied an even more rigorous standard of review. (See *id.,* at 1519). We agree with the Court of Appeals that contribution disclosure legislation will in fact survive strict scrutiny and that compelling governmental interests support it. But we do not agree that strict scrutiny—of the kind which concededly would be appropriate were the disclosure requirements applicable to membership, association, or speech—is required.

B. Disclosure of Political Contributions Above a Minimal Amount Is Justified by Overriding Governmental Interest.

Even if the making of political contributions were protected by the First Amendment, that would only be the beginning—and not the end—of the inquiry. For it would also be necessary to determine that there are lacking any governmental interests which justify the indirect infringement of those First Amendment values. Thus in *Bates v. Little Rock, supra,* at 524, the Court said:

> Decision in this case must finally turn, therefore, on whether the cities as instrumentalities of the State have demonstrated so cogent an interest in obtaining and making public the membership lists of these organizations as to justify the substantial abridgement of associational freedom which such disclosures will effect. Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling.

The opinion of the Court of Appeals fully demonstrates (as, doubtless will Appellees in their brief) the various important public interests which contribution disclosure serves. See Slip Op., at 1511-16, 1543-48. Indeed, we do not understand Appellants to question either the constitutionality or desirability of disclosure laws as such:

> [A]ppellants believe that narrowly drawn disclosure requirements are the proper solution to virtually all the evils Congress sought to remedy by passing the challenged statutes. (App. Brief, at 171).

Appellants challenge the disclosure mandated by the FECA on the ground that it overbroadly applies to all contributions in excess of $100[6] rather than to contributions in excess of some presumably larger—though unspecified—amounts. See App. Brief, at 184-89. Because in only four of the forty-four states which require campaign contribution disclosure is the reporting threshold set at *more* than $101 (see note 7, *infra* and Exhibit "A") this aspect of the attack poses a serious threat to the laws of many states, including *amici.*

In the first place, it is a matter of judgment as to at what point political contributions become so unimportant to a candidate that the public interest in knowing of them is minimal and the possibility of purchasing influence and access is avoided. In local elections, of course, a contribution of $50 or $100 may be highly significant to a campaign; but even in federal elections contributions of $100 cannot be said to be minimal. Appellants believe that the line should have been set at some other point. But the drawing of lines is a legislative matter. Even accepting the proposition that the requirement of disclosure must be

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6. A second ground of challenge—application of the disclosure requirement to minority parties and candidates—is dealt with in Part II(C), *infra.*

supported by a significant governmental interest, it cannot seriously be argued that such a showing must be made to defend fixing the line at $100 rather than $397. As Justice Stewart said in *Oregon v. Mitchell,* 400 U.S. 112 (1970), with respect to the suggestion that the legislative determination of an age of majority for voting purposes might be tested by "strict scrutiny" equal protection standards:

> Yet to test the power to establish an age qualification by the "compelling interest" standard is really to deny a State any choice at all, because no State could demonstrate a "compelling interest" in drawing the line with respect to age at one point rather than another. Obviously, the power to establish an age qualification must carry with it the power to choose 21 as a reasonable voting age, as the vast majority of the States have done. (*Id.,* at 294-95).

The vast majority of the states require disclosure of campaign contributions in a fashion comparable to the FECA. In Exhibit "A" we have summarized the applicable state laws. The enactments of thirty states compel disclosure of contributions over $50, eleven set the line at $100 or $101, and only four states set the line at higher amounts.[7]

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7. The breakdown is as follows:

Contributions	
Minimum Reportable Amount	Number of States
No Minimum	15
$ 5	2
$ 10	2
$ 15	2
$ 25	4
$ 50	5
$100	8
$101	3
$150	1
$200	2
$500	1
No Itemization	5

Although there are differences between the federal and state interests and circumstances, the wide-spread perception—as the laws of at least forty-one states demonstrate—of a need for disclosure of contributions of these lesser magnitudes cautions against acceptance of Appellants' attempt to second-guess the judgment of Congress in this regard.

There are other considerations of an intensely practical nature. Even if it could be said that contributions of, say, $500, are insufficiently large to have the potential of improper influence on a candidate or official, limiting disclosure to such contributions could, as a practical matter, render the disclosure law unenforceable. Contributions in large amounts could effectively be concealed by the use of a variety of techniques; for example, a contributor could make a contribution of just under the maximum amount and arrange for others to do likewise. Similarly, illegal corporate or labor contributions could be concealed through the use of individual "contributors" making contributions of $499. " '[I]n requiring that the state use to a proper end the means designed to impinge minimally upon fundamental rights, the Constitution does not require that the state choose ineffectual means.' " *Rosario v. Rockefeller,* 410 U.S. 752, 762 n. 10 (1973).

In view of these considerations, the Court of Appeals correctly concluded that it had "no basis for holding that this approach by the legislature . . . in drawing the line [at $100] exceeded the bounds of reasonable latitude." (Slip Opinion, at 1545). Accord: *United States v. Finance Committee,* 507 F.2d 1194, 1200 (D.C. Cir. 1974); *Stoner v. Fortson,* 379 F.Supp. 704 (N.D. Ga. 1974). In *Stoner,* the court said:

> The Georgia General Assembly has made a legislative determination that $101 is the cut-off point above

which disclosures must be made in order to achieve their stated purposes. This court recognizes that a cut-off point had to be established somewhere. There is no doubt that all campaign contributors giving $101 or more do not make such contributions in an attempt to buy influence and to corrupt the elective process; however, for the legislation to be valid, there need be no showing that all would be so inclined. [Citations] This court views the $101 or more threshold as a rational attempt by the Georgia General Assembly to establish a level of contribution that will attract the attention of the candidate and thus begin to satisfy the goals of the statute. This court notes that federal judges, under court rules, disclose gifts over $100, that Georgia judges must do the same under the Code of Judicial Conduct, that the Federal Corrupt Practices Act of 1925, supra, required disclosures of contributions over $100, and that the new Federal Elections Campaigns statute, 2 U.S.C. 431 et seq., requires disclosures of contributions over $100. (*Id.*, at 712-13).

C. Minority Parties and Candidates Are Not Constitutionally Exempt from Disclosure.

Appellants contend that, in all events, disclosure laws cannot constitutionally be applied to "new and minor parties and independent candidates." App. Brief, at 178. It is not entirely clear whether Appellants would be satisfied to see exempted only those parties not entitled to automatic ballot access (see *id.*, at 184) or whether they likewise would exempt, as their brief implies, the likes of the Missouri Republican Party (see *id.*, at 174), George Wallace (see *id.*, at 173) or Appellant McCarthy.

The Court of Appeals rejected the claimed constitutionally-based exemption, resting in part on its determination that the record "presents only scant evidence tending to show a 'chilling effect' resulting from the major disclosure requirements, and only a skimpy indication of harassment

of those whose contributions were disclosed in the 1972 and 1974 elections. . . ." (Slip Op., at 1546). Nonetheless, the balance of the Court of Appeals' analysis persuasively demonstrates the existence of compelling governmental interests of the kind which, even if a showing of "chilling effect" could be made, would warrant the enforcement of a uniform disclosure requirement. Accordingly, while we agree that the judgment can be affirmed in this respect on the ground that no significant "chilling effect" was shown on the record, we believe that the logic of the Court of Appeals' governmental interest analysis in fact answers the question the court purported to reserve:

> It may well be that a party (or candidate) can demonstrate such harassment to itself or to its supporters as to underpin a ruling that disclosure in particular circumstances cannot constitutionally be required. *Compare NAACP v. Alabama ex rel. Patterson,* 357 U.S. 449 (1958). Whether the Commission through its regulations or its advisory opinions can appropriately address this situation is a question we do not decide in the absence of concrete facts. In any event, courts sit to act in such cases when presented with a proper record. (Slip Op., at 1548).

Litigation is now pending in the lower courts in which minority parties or candidates claim that the record does demonstrate a "chilling effect." *E.g., Central-East Los Angeles Socialist Workers Campaign Committee v. Pines* (Calif. Ct. App., 2d App. Dist. Div. 4, Civ. No. 46258) (appeal from denial of preliminary injunction against enforcement of disclosure provisions of California's Proposition Nine). Because the record in the present case does not support such a claim, it may be that the Court will wish to refrain from reaching that question of balancing interests. It seems clear to us, however, that for the very rea-

sons developed by the Court of Appeals in its opinion, the interests served by disclosure are so compelling that an exemption for "minority" parties is unthinkable. In this respect, we would like briefly to underscore several points in support of a uniform application of the disclosure laws.

First, the Constitution does not command miracles of legislative draftsmanship. The task of drafting an exemption for organizations which are both burdened with enormous community hostility *and* whose candidates are not serious contenders, would be enormous. Void for vagueness challenges would be inevitable.

Second, even assuming that careful drafting might have produced a statute clearly exempting some groups, further constitutional problems would render such a statute vulnerable to challenge by included candidates and parties. If, as Appellants contend, the area of campaign contributions disclosure is protected by the First Amendment,[8] then legislative lines must be drawn with special precision; by the same token, exemptions cannot be given absent a compelling justification. For where legislation regulates the exercise of rights expressly guaranteed by the Constitution, the "rational basis" test of review is inapplicable, and judicial review requires the court to adopt "an attitude of active and critical analysis, subjecting the classification to strict scrutiny". *Westbrook v. Mihaly,* 2 Cal. 3d 765, 785 (1970). Legislatively specified inclusions and exclusions will be upheld only if justified by a *"compelling* governmental interest." *Shapiro v. Thompson,* 394 U.S. 618, 634 (1969) (emphasis added). *See e.g., San Antonio School District v. Rodriguez,* 411 U.S. 1, 29-34 (1973); *Kramer v. Union Free School District,* 395 U.S. 621, 626-631 (1969); *Harper v. Virginia,* 383 U.S. 663 (1966); *Skinner v. Oklahoma,* 316 U.S. 535

8. In Part II(A) *supra,* we of course contend to the contrary.

(1942). Nowhere have the courts been more vigilant in this respect—and properly so—than in the areas protected by the First Amendment. *See, e.g., Police Department v. Mosley,* 408 U.S. 92, 94-102 (1972); *Cox v. Louisiana,* 379 U.S. 536, 581 (1965) (Black, J., concurring). As the Court put it in *Mosley,* "government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views." *Id.,* at 96. The point, of course, is not that an attack by a Republican or Democratic candidate would necessarily succeed; surely it is enough that those who drafted the statute avoided the constitutional difficulties which would have arisen had exceptions for "unpopular" or "minority" parties been written into the statute.

Third, in the same vein, there is an additional virtue in the refusal of Congress to exempt any group from the requirements of the law. The equal protection doctrines just discussed reflect a widely perceived principle of our jurisprudential system—namely, that special privileges and exemptions in the political process are disfavored. The FECA broke new ground in numerous respects; in some instances, in the interest of strengthening and purifying our democratic processes, it imposed new requirements and burdens. The efficacy of such legislation—indeed, virtually all legislation—depends on the citizenry and their willingness to accept and adhere to the requirements of law. Exceptions to any law, be it in the tax field or election reform, which the public cannot perceive as just, threaten public confidence and ultimately the Rule of Law.

Fourth, Appellants argue that some minority candidates or parties will always be minorities, and therefore represent no threat to the integrity of the parties process. They urge, in effect, an exception for candidates and parties

whose cause is hopeless. But who is to say that a candidate who seeks public office is not a serious contender? Appellants would have the law draw a line the ascertainment of which is rife with danger. In Oakland, California, for example, a Black Panther candidate for Mayor made a serious challenge; the candidacy of Governor Wallace on the American-Independent Party platform was seriously regarded in many states; and recently there was talk of the formation of a third party espousing conservative principles, with former Governor Reagan as the Presidential standard bearer. See also Note, *Developments in the Law—Elections,* 88 HARV. L. REV. 1111, 1247 n. 75 (1975). Candidates and parties are not entitled to ask the electorate for their votes while, in the same breath, proclaiming that their candidacies are not "serious".

Fifth, even a candidate who lacks a realistic chance of election can *affect* the outcome. This is so because, as the Court of Appeals recognized, each vote that a third party candidate receives is a vote which otherwise might have been cast for one of the major party candidates. Slip Op., at 1547. For this reason, no candidate is necessarily irrelevant to the campaign or even to the outcome of an election. (And, doubtless for this reason, there have been instances of major candidates contributing further to minor party candidates—a tactic which disclosure could reveal; likewise, as the Court of Appeals observed, minor parties can "be deliberately forced to take a stalking horse role." *Id.*).

For all of these reasons, the requirement of disclosure should not be riddled with a constitutionally compelled exemption of uncertain size and shape.

Dated: October 16, 1975

Respectfully submitted,

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(Exhibit A follows)

Exhibit A

Minimum Reportable Amounts Under State Campaign Disclosure Laws

The following listing shows for each state the smallest reportable contributions under campaign disclosure laws.[1] Where "no minimum" is stated, the name of each contributor must be provided, no matter how small the contribution. Where the disclosure laws of the state have been revised in the last two years, the year of the revision is stated in parentheses.

The information contained in this exhibit is derived from Blum, ed., "Campaign Practices Legislation in the 50 States," *Campaign Practices Reports,* #1 (September 3, 1974). The information has not been double-checked against the statutes of the states, and therefore it is possible that some inaccuracies appear. In some instances where the source was unclear, information has been obtained from state officials.

1.	Alabama	$50
2.	Alaska (1974)	$100
3.	Arizona (1974)	$25
4.	Arkansas	No disclosure laws
5.	California (1973, 1974)	$50
6.	Colorado (1974)	$25
7.	Connecticut	No minimum
8.	Delaware (1974)	$100
9.	Florida (1973)	No minimum
10.	Georgia (1974)	$101
11.	Hawaii (1973)	$100
12.	Idaho	No disclosure laws
13.	Illinois (1974)	$150
14.	Indiana	No minimum
15.	Iowa (1973)	$100
16.	Kansas (1974)	No minimum
17.	Kentucky (1974)	$100
18.	Louisiana	No campaign disclosure laws (except as to corporations)

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1. In some cases, contributions "over" the amount stated must be itemized. In other cases, contributions equal to or greater than the amount stated must be itemized.

19.	Maine (1974)	$50
20.	Maryland	No minimum
21.	Massachusetts (1973)	$15
22.	Michigan (1974; new law effective in 1975)	$15
23.	Minnesota (1974)	$100 ($50 for local candidates)
24.	Mississippi	$500 ($100 for local candidates)
25.	Missouri (1974)	$25
26.	Montana	$5
27.	Nebraska (1973)	$100
28.	Nevada (1973)	No contribution disclosure law
29.	New Hampshire	No minimum
30.	New Jersey (1973)	$101
31.	New Mexico	No minimum
32.	New York (1974)	$50
33.	North Carolina (1974)	$50
34.	North Dakota	No contribution disclosure laws
35.	Ohio (1974)	No minimum (Contributions $25 if received at fund raising event)
36.	Oklahoma (1974)	$200
37.	Oregon (1973)	$25
38.	Pennsylvania	No minimum
39.	Rhode Island (1974)	$200
40.	South Carolina	No itemization required
41.	South Dakota	No minimum
42.	Tennessee	No minimum
43.	Texas (1973)	$10
44.	Utah (1973)	No minimum
45.	Vermont	$100
46.	Virginia (1973)	$101
47.	Washington	$5
48.	West Virginia	No minimum
49.	Wisconsin (1974)	$10
50.	Wyoming (1974)	No minimum

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In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-436

JAMES L. BUCKLEY, United States Senator
From the State of New York, et al,

Appellants,

vs.

FRANCIS R. VALEO, Secretary, United States Senate, et al,
and CENTER FOR PUBLIC FINANCING OF ELECTIONS, et al,
JAMES C. CALAWAY of Houston, Texas,

Appellees.

Brief of Amicus Curiae of the Socialist Labor Party in Support of the Appellants Appeal of the Judgments of the United States District Court of the District of Columbia and the United States Court of Appeals for the District of Columbia

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In the Supreme Court of the United States

OCTOBER TERM, 1975

No. .....

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Brief of Amicus Curiae of the Socialist Labor Party in Support of the Appellants Appeal of the Judgments of the United States District Court of the District of Columbia and the United States Court of Appeals for the District of Columbia

INTEREST OF THE AMICUS CURIAE

This brief of Amicus Curiae is filed pursuant to Rule 42(2) of The Rules of the Supreme Court by consent of the parties. Amicus Curiae, the Socialist Labor Party, is an unincorporated association established in 1877, the result of a merger of the National Labor Union, the North American Federation of the International Workingman's

Association, and the Social Democratic Workman's Party, and was first known as the Workman's Party of the United States.[1]

It nominates candidates for public office on local, state, and national levels and engages in a number of activities other than those generally associated with a political party. The party publishes a weekly newspaper, THE WEEKLY PEOPLE,[2] as well as pamphlets which are distributed by mail and on street corners throughout the United States. It further holds public meetings and study groups and engages in radio and television broadcasts and commentaries.

Though it has nominated and campaigned for candidates for congress and the presidency, it has never won an election on the national, state, or local levels. It has established a political committee to accept contributions and make expenditures on behalf of a presidential candidate to be nominated at a convention convening on February 7, 1976. The nomination of a presidential candidate and his campaign are viewed by the party as another means of education of the public regarding their political, social, economic, and philosophical beliefs which can be described as Marxist-De Leonism. In essence the Socialist Labor Party adopts Marxist Analysis and applies this concept to American life.

The Committee submitted a registration to the Federal Election Campaign Committee on August 22, 1975. As the Federal Election Campaign Act subjects them to re-

1. Brissenden, *The I.W.W., A Study of American Syndicalism,* New York, Columbia University, 1919, pp. 46-47; Madison, *Critics and Crusaders, A Century of American Protest,* New York, Frederick Ungar Publishing Co., 1959 ed., pp. 449-452.

2. *The Weekly People* has been found to be a non-commercial, non-profit publication. *Long v. City of Anaheim,* 255 Cal.App.2d 191, 63 Cal.Rptr. 46 (1967).

port and disclosure requirements, the committee is interested in the outcome of the challenge of the Federal Election Campaign Statutes because disclosure requirements will inhibit their ability to obtain contributions to further their educational campaign. Secondly, the committee has concern for their inability to obtain funds from the Public Campaign Finance Fund while the major parties qualify for such aid.

SUMMARY OF ARGUMENT

I

Minor parties are required to disclose the source of campaign contributions under the Federal Election Campaign Act. Disclosure poses a threat to first amendment associational rights chilling the exercise of fundamental liberties. The threat is posed by economic and personal reprisals that contributors to unpopular causes will face upon disclosure.

The opinion of the Court of Appeals recognizes the threat and considers disclosure from minor parties as an infringement of associational right. However, the Court is unwilling to declare the disclosure provisions as applied to minority parties unconstitutional without ample evidentiary basis of infringement.

The evidentiary basis is difficult to prove and the sanctions are subtle. As irreparable harm can be done to individuals and associations prior to meeting any legal tests, the provisions should be declared unconstitutional as applied to minor parties.

The government does not have a compelling interest to require disclosure from minor parties whose role in the political process is educational and serves to validate our free society and inform the electorate. The function of the Socialist Labor Party is akin to issue-discussion groups exempted from disclosure by invalidation of provisions applicable to their exercise of first amendment rights.

The abuse aimed at by the laws is not created by or with the aid of a minor party. Though restriction of first amendment freedoms may be permissible because of the interests of the government in the integrity of elections, the least restrictive means was not employed for the legislative scheme.

II

The public financing provisions of the Federal Election Campaign Act excludes minor parties access to public funds. The standards employed to allow campaign funding are suspect classifications drawn by incumbents of the major parties, and the laws favor those two parties.

The effect is to limit the access of minor parties to public funds and thereby unduly burden their interest in the availability of political opportunity. This infringes upon the associational and free speech rights of the members of disadvantaged minor parties.

Though reasonable restrictions can be placed on first amendment freedoms the factual basis of legitimizing the restriction must be provable. The Court is obligated to apply strict scrutiny when inquiry of competing governmental interest and first amendment interests abut. If no compelling interest justifies the encroachment, the provisions must be declared unconstitutional.

ARGUMENT

I. The Disclosure Requirements of the Federal Election Campaign Act Should Be Declared Unconstitutional as Applied to Minor Parties.

Under the Federal Election Campaign Act the Socialist Labor Party is required as the major parties to disclose the names and addresses of contributors to their campaign

through audit or report. 2 U.S.C. 432, 434(B)(2), 438. 26 U.S.C. 9003(A). The disclosure required does not consider the nature, purpose, and effect the Socialist Labor Party and other minor parties have in election campaigns. The purview of the Act does not recognize the position of such a minor or minority party in the political spectrum, and the consequences of disclosure to the party, its members and sympathizers, and the political process.

A. Disclosure Poses a Sufficient Threat of Intimidation and Harassment to Minor Party Contributors to Recognize Infringement of Their Associational Rights Without an Evidentiary Basis.

The disclosure requirements pose a threat to the party, its members, and democratic principles by imposing the specter of harassment and intimidation of individuals who would support such unpopular causes.[3] Accordingly, individuals are inhibited from contributing to the campaign of the spokesman-candidate of the minor party.

In *NAACP v. Alabama,* 357 US 449, 460, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1957), requiring disclosure of membership lists violated the rights of members of an organization to engage in lawful association in support of common beliefs. Although there was no contention that the membership was directly suppressed by such disclosure the consequence of suppression, intimidation, harassment, physical abuse, and loss of economic sustenance provided the basis for the unconstitutionality of the disclosure in the absence of an overriding valid state interest.

An analogous situation exists with the Socialist Labor Party being required to disclose the names, addresses, and

---

3. The harassment and intimidation that concerns the individual is not from the major parties who win elections nor the public generally as the majority opinion of the Court of Appeals suspects but that from neighbors, landlords, employers, business associates, store owners, and lenders of money, etc. whose sanctions are subtle.

occupations of its contributors.[4] Through not contention of direct suppression, intimidation, harassment, physical abuse, and loss of economic sustenance can be made presently;[5] protection of first amendment rights should not only become available after the foreseen consequences have crippled individuals and associations creating a burden that endangers the efficiency of the association, and the beliefs of its members and sympathizers.

The recognition of the threats posed by disclosure to contributors to controversial candidates without an evidentiary basis was accepted by the court in *Stoner v. Fortson,* 379 F.Supp. 704 (N.D.GA 1974). However, the court decided that there was a compelling state interest for disclosure, and a substantial connection between the disclosure sought and the purpose for which disclosure was required that made infringement of associational rights permissible.

In *Stoner* the threatened infringement was based on disclosure of contributors to a controversial candidate. No rational demarkation can be made between controversial and noncontroversial candidates to permit decision prior to evidentiary findings of the harassment, physical abuse, and loss of employment feared from disclosure that would provide consistent treatment. A standard can be

4. Even if contributions under $100.00 are not reportable as the Act requires recording of the contributor of $10.00 or more which is subject to audit, there is no guarantee of confidentiality for the contributor.

5. The Socialist Labor Party has a policy of disclosing in their paper, *The Weekly People,* contributions unless anonymity is requested. Though no evidence can be presented with regard to threats of FECA disclosure, the Party can provide evidence of such feared activity in relation to contributors generally and prior to this disclosure.

established when a line is that between major and minor parties thus obviating the need for an evidentiary hearing.[6]

The evidentiary basis of infringement feared from disclosure cannot readily be proved. In order to do so the party must require members to publicize that which will foster the reprisals they seek to avoid. It is difficult to prove economic or other reprisals because the sanctions are subtle. Prior to meeting a legal test to justify the unconstitutionality of disclosures provisions, great injury could be done to the organization.[7]

B. The Role and Effect of Minor Parties in the Political Process Does Not Require Disclosure to Insure Valid State Interests.

United States v. Harriss, 347 US 612, 74 S.Ct. 808, 98 L.Ed. 989 (1954) supports the view that interference with first amendment freedoms is permissible if disclosure requirements infringe such rights as long as valid and paramount state interests indicate the choice of state interests over first amendment freedoms. However, in *Harriss* paid lobbyists were required to disclose the source of their funds, or in other words, their clients. The situational context was commercial and distinguishable from contributions to a candidate for public office, especially a candidate whom is unlikely to be elected.

The scrutiny that an elected official will receive avoids in large measure the need for disclosure of his campaign contributors. It is unlikely that contributors to minor parties will be doing so to buy any favors. Accordingly, the

6. Bazelon Dissent, Unpublished Opinion, Buckley vs. Valeo, page 1593.

7. Bazelon Dissent, supra, Page 1595; Harvard Law Review, Vol. 88, Number 6, April 1975, Pages 1248-1249.

abuse that the Federal Election Campaign Act seeks to eradicate is not present in the case of a minor party such as the Socialist Labor Party.

The abuse is one created by the major parties for which minor parties will suffer the detriments attendant on loss of associational freedom. The history of the Socialist Labor Party demonstrates that no candidate nominated for any elective office has ever won. It is doubtful that the abuse aimed at by the disclosure provisions of the Federal Campaign Act is operative under this circumstance.

The purpose and role of minor party candidates are primarily educational in the context of our politics. Minor parties validate our free society and inform the electorate. Inspite of their lack of fiscal ability they provide a guide for major party candidates of minority views which may influence the candidates programs. This, of course, may not always be true, and recent experience has indicated independent candidates can influence elections.[8] For the remainder of minor parties the possibility of influencing elections is non-existent because of a lack of funds sufficient to enable them to gain political parity with the major parties.

In the 1972 presidential and vice-presidential campaign the Socialist Labor Party Committee expended contributions in the amount of $106,261.41 on behalf of their candidates.[9] They had limited access to media during the 1972 campaign and on their only broadcast with an ABC radio network commentary, only six of the networks affiliates carried the show. The Party has never won any election campaign. Accordingly, the campaign is regarded as educational activity where the views of the Socialist Labor Party may have the opportunity to enter the forum of public debate.

8. e.g. George Wallace Campaign of 1968.

9. This amount is less than ½ of 1% of the funds the Act authorizes for expenditures on a presidential campaign.

C. There Is No Compelling State Interests Sufficient to Justify Disclosure by the Socialist Labor Party.

The Party relies upon their campaign funds to carry on an equally important educational activity to the publication of their newspaper. The number of members and sympathizers is small, and when limited to under $100.00 to avoid disclosure it is unlikely if the candidates will have sufficient funds to establish an organization to permit active campaigning in a meaningful manner. Traditionally larger contributors to the Socialist Labor Party candidates own businesses, and though supportive of the views of the Party realize that an association of their business and the Party will bring economic detriment. In other instances partners of contributors do not want the association, and consequently contributions from these sources will be curtailed or cease.

The majority opinion of the Court of Appeals recognizes that disclosure may prompt reduction of contributions to minority parties and that so far as unpopular minor parties are concerned, disclosure does indeed infringe their first amendment freedom to associate to advocate unorthodoxy. Citing *Sweezy v. New Hampshire,* 354 US 234, 77 S.Ct. 1203, 1 L.Ed.2d 1311 (1954). However, the majority views the disclosure requirements as a reasonable restriction of such rights validated by the state interests in avoiding campaign abuses and insuring the confidence of the American public in the political process. Further, they present the "Stalking Horse" theory in which people influence the election of their candidates by eco-

nomically supporting exempted minority parties who will theoretically reduce the votes of the candidate the contributor opposes.

Though not allowing the supposed threat of infringement of first amendment freedoms to invalidate the disclosure requirements, the majority has employed the supposed threat of the "Stalking Horse" to support the view that compelling state interest necessitates the restriction of constitutional liberties. The "Stalking Horse" theory is unrealistic when applied to the Socialist Labor Party because of their limited ballot access and inability to register any significant voter response.

When government restriction stifles the exercise of fundamental liberties the least restrictive means to satisfy legitimate interests must be chosen as a legislative scheme. *Shelton v. Tucker,* 364 US 479, 488, 81 S.Ct. 247, 5 L.Ed.2d 231 (1960). Judge Bazelon has proposed criminal sanctions as a less restrictive remedy for the state without infringing constitutional rights to stable the "Stalking Horse". This supposed threat could be remedied by establishing a monetary ceiling of contributions that would require reporting if an effectual amount of campaign funds are collected.[10] In order for the "Stalking Horse" theory to become meaningful the amount of funds a candidate and minor political party would require to effect an election would be substantially more than the amount of contributions the committee of the Socialist Labor Party will receive; which they hope to be similar in an amount to the 1972 campaign. As the

10. Among the solutions to fashioning disclosure requirements to insure associational rights is an alternative that only after election would disclosure be required. Of course, a definition of minor or minority party would first be required. See Footnote 1 of Bazelon Dissent, *Buckley v. Valeo,* p. 1593.

problem does not exist without substantial funds it is difficult to justify infringement of associational rights of non-monied parties.

The opinion of the Court of Appeals has declared Section 437A of the Act unconstitutional because of its application to "issue discussion" groups such as New York Civil Liberties Union as requiring disclosure of their non-partisan political activity. There is no effective difference between the New York Civil Liberties Union and the Socialist Labor Party in terms of their political activities other than the nomination of candidates to run for elective office. In fact the Civil Liberties Union, and other groups such as Common Cause and the League of Women Voters may have more influence upon elections than the partisan Socialist Labor Party due to such factors as their funding, organization, and media access. Minor parties share more characteristics with issue-discussion groups than they do with the major parties.

The opinion acknowledges only that these groups may be subject to disclosure requirements as the provision could exact information that would substantially infringe the associational rights of the members of organizations taking public stands on public issues. The purpose and function of such groups and the Socialist Labor Party is educational, and though the party nominates candidates for public office its effect is no different than issue-discussion organizations as it has not won any election in the almost 100 years of its existence. Further, as it obtains a small percentage of the vote it is unlikely to influence the election of any other candidate.

The Party through its newspaper, The Weekly People, will besides discussion of public issues, public officials, political leaders, and candidates endorse its candidate for

president. Due to such advocacy the Party would be required as Human Events to report under Section 437A. Further, under 2 U.S.C. Section 434(E) the Party as well as the Committee will be subjected to report requirements due to such advocacy in their newspaper.[11]

The advocacy there involved appears no different than the advocacy of *United States v. National Committee for Impeachment,* 469 F.2d 1135, 18 ARF 925 (1972). The funds of the Socialist Labor Party and the Committee will be segregated. The activities that the Party will have in the election year will be the same as any non-election year. The only exception will be that the spokesman at activities will be the candidate instead of the Secretary of the Party who will perform the educational function of the Party.

The disclosure requirements present a burden to minor parties not only because of its associational infringement. It further burdens the minor party's hard pressed resources, financial and human, to interpret the provisions, compile the records, and obtain legal counsel to comply with the reporting requirements of the law. A large percentage of manpower and funds is already consumed by attempts to qualify for ballot access. Thereby, the effective advocacy of the minor party position is endangered. However, this problem is not equivalent to the burden that disclosure creates on associational right, but is part of that greater burden.

In essence, the justification for disclosure from minor parties is circumspect because minor parties take clearer positions than the major parties, and their role is such that a list of contributors is unlikely to receive publicity. However, contributors will feel endangered by disclosure

11. See *Buckley v. Valeo* Opinion, p. 1551.

because of the unpopularity of minority party views. Without funds to organize, the effectiveness with which their positions can be advocated is compromised, and the burden may stifle the unpopular view. Though disclosure of the major parties contributors may reduce the volume of speech, disclosure of the minority parties could eliminate their speech.[12]

II. The Standards to Obtain Public Financing of Campaigns Discriminate Against Minor Parties in Violation of the Constitution.

The public financing provisions of the Federal Election Campaign Act were passed to lessen the influence of private money and therefore large donors on the election of public officials. The Act is a response to past campaign abuse and indiscretion, and as no solicitation of campaign funds is necessary the corruption and favor buying should be discouraged if not eliminated. Minor parties felt that the public financing of campaigns would facilitate the election of those individuals and parties without substantial funds and with limited ballot access. 26 U.S.C. 9008(E). Due to the qualifiation requirements for funding no minor party as the Socialist Labor Party can qualify for campaign funds.

In order to meet the definitional requisites of a candidate for president, a minor party nominee must have his name or presidential electors on the ballots of ten states. 26 U.S.C. 9002(2). In 1972 the Socialist Labor Party did qualify for ballots in eleven states via the presidential elector alternative.[13]

12. Harvard Law Review, Volume 88, Number 6, April 1975 p. 1247.

13. The Socialist Labor Party qualified for ballot access in the states of Colorado, Illinois, Indiana, Iowa, Michigan, Minnesota, New Jersey, New York, Ohio, Virginia, Washington, and Wisconsin.

It would appear that the Party will be able to satisfy this threshold requirement for funding. It should be understood that numerous minor parties will not be able to satisfy this requirement. The Socialist Labor Party has been able to obtain ballot access in the past by devoting a disproportionate amount of manpower and finances to insure this limited amout of inclusion in the political process.

The standards to obtain payments are wedded to the proportion of popular votes obtained by a party in the former election or contribution requirements impossible for a minority party to meet. 26 U.S.C. 9004 (A)(2)(A). The standards absent factual implications are not objectionable per se. However, when it is understood that the only two parties that could qualify for full funding by obtaining in excess of 25% of the popular vote is the Democratic and Republican parties, and the only other party to qualify for proportional funding is the American Independent Party by receiving between 5% and 25% of the vote; and no other party qualifies for funding as no minor party received over 5% of the vote, the standards as drawn unfairly exclude minor parties in violation of the Fifth Amendment. *Lubin v. Parnish,* 415 US 709, 94 S.Ct. 1315, 39 L.Ed.2d 630 (1974). 26 U.S.C. 9002 (6)(7)(8).

Under this system a minor party is locked into a secondary role, and because of previous lack of success at the polls, which stems partly from ballot access restrictions, a minor party will not be provided with the monetary ability to change their position. *Kusper v. Pontikes,* 414 US 5, 94 S.Ct. 303, 39 L.Ed.2d 7 (1973). Instead the parties that need funds the least will be receiving the benefits of public financing. This discrimination should be viewed with strict scrutiny. *Chicago Police Department v. Mosley,* 408 US 92, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972).

The state does appear to have a valid interest in maintaining the integrity of its elections, *Storer v. Brown,* 415 US 724, 94 S.Ct. 1274 (1974); *Jenness v. Fortson,* 403 US 431, 91 S.Ct. 1970, 29 L.Ed.2d 5541 (1971), and the state is not obliged to finance the efforts of every nascent political group. *American Party of Texas v. White,* 415 US 767, 94 S.Ct. 1296, 39 L.Ed.2d 744 (1974). However, alternatives to access must be provided, *Bullock v. Carter,* 405 US 134, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972), and the state must demonstrate that a compelling interest requires the regulations imposed, *Williams v. Rhodes,* 393 US 23, 89 S.Ct. 5, 21 L.Ed.2d 2124 (1968), and *NAACP v. Button,* 371 US 415, 83 S.Ct. 328 (1963).

The standards for sharing in the government subsidy of election campaigns are inherently suspect classifications. The standards were drawn by incumbent members of the major parties, and the laws definitely favor those two parties. Discrimination against minor parties occurs because the governmental interest is not achieved in a manner that does not unnecessarily burden a minor parties interest in the availability of political opportunity. *Lubin v. Panish,* supra. The government has discriminated against minor parties by framing the law to exclude them from funds it appears they can qualify for under the public financing sections of the Act in derogation of associational and free speech rights. *Williams v. Rhodes,* supra.

The analogous ballot access cases cited are determined on a consideration of the procedure employed to regulate or provide equal treatment. Depending upon how much factual discrimination, and therefore burden is placed on the constitutional litigant the interest of the government or of the litigant is validated.

When first amendment freedoms are involved the government may not only have to permit their exercise but provide facilities. *Healey v. James,* 408 US 169, 92 S.Ct. 2338, 33 L.Ed.2d 266 (1972). This should be prescribed because the public financing provisions violate constitutional safeguards by the discrimination promoted with suspect classifications, and the undue burden of access standards for minor parties. Though there is no obligation to support every nascent political group, the laws cannot be drawn in a manner that instead of maintaining the integrity of elections, maintains the two-party system.

CONCLUSION

For the foregoing reasons your Amicus Curiae, the Socialist Labor Party, respectfully requests that the judgments of constitutional questions 6, 7(A), 7(B), and 7(D) of the Court of Appeals be reversed.

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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-436

James L. Buckley, Et Al,
Appellant

v.

Francis R. Valeo, Et Al,
Appellee

On Appeal from the United States Court of Appeals for the District of Columbia Circuit and from the United States District Court, District of Columbia

BRIEF AMICUS CURIAE FOR JAMES B. LONGLEY

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BRIEF AMICUS CURIAE FOR JAMES B. LONGLEY

INTRODUCTION

James B. Longley, a resident of the State of Maine, presents this brief in support of the Plaintiffs-Appellants with the consent of counsel for all parties.

INTEREST OF AMICUS

James B. Longley is Governor of the State of Maine. He was elected in November, 1974 in spite of the fact that he was not

affiliated with a political party. He did not campaign as a Democrat or as a Republican but rather as a candidate independent of both political parties. In the 1974 general election, he was the only candidate in the nation elected to a major office without political party affiliation. Governor Longley's successful election was in part attributable to the concern of thousands of Maine citizens with the integrity of the two party system in the United States. He shares the view of those Americans who believe that the integrity of the electoral process can best be served by subjecting election campaigns to the rule of law. He does not share the view of those who believe the rule of law should be used to deny citizens the right of political expression except through affiliation with the Democrat or Republican parties. Certain portions of the Federal Election Campaign Act of 1971 as amended by the Federal Election Campaign Act Amendments of 1974 (hereinafter cited as FECA) require such political affiliation as a practical condition to effective political expression. Accordingly Governor Longley joins the Plaintiffs-Appellants in urging reversal of the decision of the United States Court of Appeals for the District of Columbia Circuit.

ARGUMENT

FECA represents a successful bi-partisan attempt to preserve the present two party system by placing obstacles in the paths of candidates of other parties and independents. The legislative history is replete with examples of bias in favor of the Republican or Democrat parties. Senator Pastore argued in connection with the check-off system "What we are trying to do is give both sides the same amount of money ...." Cong. Rec. §18891 (daily ed. Nov. 17, 1971). In the public financing section of FECA, non-major party candidates and independents do not receive full funding. If one assumes a certain amount of altruism on the part of Congress, a difficult assumption in view of the legislative record pertaining to FECA, one must further assume that the failure to place non-major party candidates and independents on an equal footing with major party candidates was

prompted by the supposed unlikelihood of their election. The successful Longley candidacy in Maine contradicts this premise. It is naive to consider his victory as a political aberration. Third party efforts have admittedly made a recognizable impact on national elections in the past decade, and the Longley victory proved that a third party candidate or independent could in fact be elected to a major office if such a candidate could attain political viability. Certain of the FECA provisions make it impossible for such a candidate to achieve such viability.

I. THE DISCLOSURE REQUIREMENTS OF §434 ARE UNCONSTITUTIONAL WHEN APPLIED TO NON-MAJOR PARTY OR INDEPENDENT CANDIDATES.

In part, a non-major party or independent candidate must depend upon obtaining financial support from contributors who demand anonymity. This is not a concern of the major parties. In most instances, their contributors have previously acknowledged their political views by registering with a particular party. Such contributors are not concerned with the privacy of their political beliefs. Their act of political registration is public testimony of that fact. The disclosure of financial support for a particular party candidate is a logical and innocuous extension of their political affiliation. Such is not the case with those who might be inclined to contribute to the candidacy of a person outside the two party system. Such a potential contributor must consider the effect of acting on his convictions by publicly acknowledging his support for a candidate who is not a member of the Democrat or Republican parties. Depending upon the extent of his prior political involvement with the major parties, such a potential contributor must pay a price to exercise his First Amendment freedoms. This price could range from mere neighborly concern as to his reasons for supporting a third party or independent candidate to loss of employment or worse as a means of retribution. Whatever the price, it must be paid by the potential contributor who decides to exercise his First Amendment freedoms outside the established two party system. It is a price that is not exacted from potential contributors to the major party candi-

dates. It is a price that necessarily poses a reasonable danger of chilling the exercise of First Amendment rights.

Chief Justice Warren wrote in Sweezy v. New Hampshire, 354, U.S. 234, 251 (1957) "History has amply proved the virtue of political activity by minority, dissident groups who innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted." The opinion of the Court of Appeals recognizes the historical wisdom of Chief Justice Warren's observations. Yet the decision permits a law to stand that necessarily poses a threat to the political viability of any third party or independent candidate. It does so on a "technicality". It does so because the record does not contain substantial evidence of possible chill and harrassment. First Amendment freedoms are too dear to be eroded by legal "technicalities". The Court should apply its most exacting review in this instance and find the disclosure requirements of §434 unconstitutional.

II. THE CONTRIBUTION LIMITATIONS OF §608(b) ARE UNCONSTITUTIONAL WHEN APPLIED TO NON-MAJOR PARTY OR INDEPENDENT CANDIDATES.

Common sense requires one to conclude that the power of wealth "unduly influenced politics, an influence not stopping short of corruption ...." United States v. UAW, 352 U.S. 567, 570 (1957). Congress correctly responded to the excesses of the 1972 election by proposing legislation designed to curb obvious abuses of our electoral process. Congress incorrectly responded to those excesses by enacting legislation that makes non-major party participation in the electoral process a practical impossibility.

FECA is premised on the erroneous assumption that a non-major party or independent candidate cannot be elected to a major national office. The election of James B. Longley as Governor of Maine should serve to dispel that illusion. Given the same financial assistance available to the major party Presi-

dential candidates in any given year, it is probable that a Longley could have obtained a substantial number of votes and possibly have been elected President. Had such a hypothetical election occurred at an appropriate time subsequent to the disclosure of the revelations concerning the last Presidential campaign, the election of a Longley would have been more than possible - - it would have been probable.

If FECA becomes law, the erroneous assumption that a non-major party or independent candidate cannot be elected to a major national office will no longer be an erroneous assumption. The Democrat and Republican parties will have successfully legislated any third party or independent competition out of existence. They will have done so by subjecting their potential competitors to their bi-partisan contribution limitations and, at the same time, excluding those same potential competitors from sharing equally in the public financing section of the legislation. The non-major party and independent candidates should not be treated as the equals of major party candidates in one section of the legislation and less than equals in other sections. If the non-major and independent candidates are to be subjected to the disadvantages of FECA, at the very least they should be allowed to benefit equally with the major party candidates as far as the advantages of FECA are concerned.

III. THE PUBLIC FINANCING PROVISIONS OF FECA DISCRIMINATE AGAINST NON-MAJOR PARTY OR INDEPENDENT CANDIDATES.

An independent candidate who does not participate in primaries or receive the nomination of a party at a convention is obviously ineligible for primary and convention funding. In order for a Longley, for example, to achieve the necessary political viability, national exposure would be a necessity. A primary campaign or convention enables a candidate to obtain such exposure. The independent candidate is then denied the benefits of a primary campaign or a convention unless the candidate chooses to follow the typical major party route to election. Much of Governor Longley's appeal to the voters of

Maine was based upon his refusal to follow this path in Maine. He maintained that the major parties had lost touch with the needs of the people. The people of Maine obviously agreed with him. Had he run nationally in November of 1974, it is probably safe to assume that a great many people in other states would likewise have agreed with him.

Other provisions concerning public funding are likewise weighted in favor of the established parties. The treatment of a non-major party candidate is discriminatory. However, such a candidate benefits generously compared to the independent who desires to run for national office without the political strictures of a party. For example, not only is the independent denied primary and convention funding, if he wins he is not allowed to receive post election funding unless he has created a party. The Court of Appeals seems to recognize this uneven treatment but fails to find it fatal because the appropriate provisions of FECA are not invidiously discriminatory. At the same time, the Court recognizes the necessity for all concerned to maintain a careful scrutiny as the provisions are implemented. The Court seems to be suggesting that the admittedly discriminatory features of FECA will be judicially tested at such time as a real rather than a speculative controversy exists. Such an occasion will probably never occur because the discriminatory features of FECA will never enable a non-major party or independent candidate to succeed to the point where he can present a real controversy for judicial scrutiny.

The Supreme Court has never hesitated to strike down any scheme that places unreasonable obstacles in the way of candidates or parties seeking access to the ballot. Williams v. Rhodes, 383 U.S. 23, 31 (1968). The failure to afford non-major party or independent candidates equal access to public funds places an unreasonable obstacle in such a candidate's path to national office.

Many Americans are disenchanted with the present two party system and desire change. Many Americans desire political leadership independent of a party system they distrust.

They desire to vote for an individual and not a party. The Public Financing Provisions of FECA perpetuate the two party system at a time when many Americans are seeking an alternative. Through FECA the two major parties have successfully constructed legal fortifications around their endangered positions. They have used the public demand for reform of the electoral process to frustrate the ever increasing independent and third party movement in the United States. Each major party sacrificed equally. In return each major party was guaranteed that its members could seek elective office within the traditional political framework. Each party willingly accepted the inconvenience of FECA in return for the convenience of seeking elective office without the third party or independent threat.

IV. ABSENT REVERSAL OF THE COURT OF APPEALS' DECISION, RESTRICTIVE STATE LEGISLATION AGAINST NON-MAJOR PARTIES OR INDEPENDENT CANDIDATES IS PROBABLE.

21 Maine Revised Statutes Annotated §§491 - 494 pertain to the procedure for nominating a candidate for any State or County office independent of a political party. The Legislature of Maine amended several sections of Title 21 after the election of an independent candidate as Governor. Previously an independent candidate for Governor could gain access to the ballot by obtaining voters' signatures equal to one percent (1%) of the number of votes cast for Governor at the last gubernatorial election. One of the amendments increased the number of signatures required to three percent (3%). Previously the required signatures had to be filed with the Secretary of State before August 15th of the election year. One of the amendments altered this section of Title 21 by requiring such signatures to be filed on the date of the primary election. Title 21 Maine Revised Statutes Annotated §448 designates the second Tuesday of June of each general election year as the date of the primary election. Finally the Legislature enacted an amendment requiring an independent candidate to file a

declaration of candidacy with the Secretary of State by April 1st of the election year in which he or she will be a candidate.

These changes in procedure obviously make a potential independent candidate's task more difficult in Maine. It is equally obvious that these changes resulted because of the Longley victory. Unless the decision of the Court of Appeals is reversed, it is certain that other state legislatures will attempt to perpetuate the two party system by placing discriminatory obstacles in the way of non-major party or independent candidates. FECA will, in all likelihood, be utilized as a blueprint for ostensible election reform by state legislatures throughout the country. The Act and its progeny thus will effectively sound the death knell for non-major party and independent political activities in the United States.

CONCLUSION

Amicus urges that the judgment of the Court of Appeals be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served three copies of this Brief of James B. Longley as Amicus Curiae upon counsel of record for each of the parties by depositing copies of said Brief in the United States Mail, properly addressed and with sufficient postage thereon to insure delivery by air mail.

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